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In The

Supreme Court of the United States

October Term, 1980

No. 80 _____

THE UNITED STATES OF AMERICA,
Respondents

v.

GEORGE ANDERSON,
Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Questions presented

1. Whether that portion of the income of a noncompetent Indian cattle rancher allocated to the seasonal grazing of his cattle under grazing permits on tribal grazing units of tribal and allotted trust land is subject to Federal Income Tax?
2. Whether tax exemptions of Indian income derived directly from Indian trust lands must be found in express exemptive language in a statute or treaty or whether they may be found by implication in Federal Indian policies and programs, in various Federal statutes and in long standing implementation and administrative interpretation thereof?
3. Whether Federal income taxation of income derived from the trust land of others by an noncompetent Indian is encumbrance of that trust land within the meaning of the General Allotment Act of February 8, 1887, 24 Stat. 388; the Fort Peck Allotment Act of May 30, 1908, 35 Stat. 558; the Indian Reorganization Act of June 18, 1934, 48 Stat. 984; the Federal Regulations which sprang from the Indian Reorganization Act as found in 25 CFR §151 and following; and the General Congressional and Federal Policy of the United States towards its Indian wards?
4. Whether the taxation of a noncompetent Indian's income derived from cattle ranching and grazing units of tribal trust land other than his own is unconstitutional and a violation of the equal protection clause of the 5th Amendment?

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Parties to this Proceeding

United States of America, Plaintiff-Appellant; and George Anderson, Defendant-Appellee, who is the Petitioner to the United States Supreme Court.

Opinions Below

The opinion of the Court of Appeals for the Ninth Circuit is reported at 625 F. 2d 910. (See Appendix A) The opinion of the District Court of Montana appears at 442 F. Supp. 10 (see Appendix B).

Statement of Jurisdiction

The judgment reversing the District Court's summary judgment was entered on August 21, 1980. A timely petition for rehearing was denied by an order dated October 27, 1980. This Court's jurisdiction is invoked under 28 USC § 1254 (1).

Constitutional Provisions, Treaties, Statutes Ordinances and Regulations

The following statutes and regulations are reproduced as appendices:

(1) General Allotment Act of February 8, 1887, 24 Stat. 338. (Appendix C)

(2) Allotment Act of Fort Peck Indian Reservation of Montana, Act of May 30, 1908, 35 Stat. 558. (Appendix D)

(3) Indian Reorganization Act of June 18, 1934, 48 Stat. 984. (Appendix E)

(4) General Grazing Regulations for Indian Reservations, 25 CFR § 151.1 through §151.7 (Appendix F)

The constitutional provision involved is the 5th Amendment to the United States Constitution which in pertinent part provides:

> "No person shall be ***deprived of life, liberty or property, without due process of law;***."

Statement of the Case

Defendant George Anderson is a noncompetent Sioux Indian and an enrolled member of the Fort Peck Indian Tribes of Montana. Mr. Anderson is a rancher by occupation and all of his ranching operations are conducted and the income therefrom, if any, derived entirely within the boundaries of the Fort Peck Indian Reservation.

Anderson is the beneficial owner as allottee of a 316.24 acres of trust land, and is also the grantee by deed of the beneficial ownership of 320.40 acres of land originally allotted another Indian. The Government concedes that Anderson's income from these lands is exempt from Federal Income Tax.

Anderson is also the holder of a grazing permit allowing him to graze his cattle on Range Unit No. 122 within the Fort Peck Indian Reservation. This Range Unit, for the taxable years pertinent to this case, consisted of approximately 4,160 acres of land beneficially owned by some 17 Indian allottees, and of approximately 640 acres beneficially owned by the Tribe. All of this land is held in trust by the United States for the use and benefit of the allottees or the tribe. This range unit was established by the tribe pursuant to the Indian Reorganization Act of 1934, 48 Stat. 984, 25 USC § 461-479; namely 25 CFR § 151.1 and following; and a land use program adopted and implemented by the Fort Peck Tribes for the benefit of tribal members.[1]

1. The Fort Peck Reservation has large areas of semi-arid marginal lands useful only for the grazing of livestock. In order to utilize this land for the benefit of its members, the Tribe adopted a land use program whereby these lands are divided into grazing units. These grazing units are made available to tribal cattlemen, such as Anderson, who receive permits to graze their cattle throughout the grazing season. The permit holder pays a small amount per head per grazing season. Thus a tribal cattle member can stretch the capacity of his home base of

The taxable years pertinent to this case are 1960 through 1966. During the grazing seasons of these years (May 1 through October 31), Anderson's cattle were kept on the grazing unit. At the conclusion of the grazing season, the cattle were returned to the land granted to Anderson by allotment and by deed. This litigation arose as a consequence of the Government's attempt to tax whatever income Anderson may have derived from the use of the grazing unit.

On January 6, 1975, the United States filed suit praying that the Defendant be adjudged delinquent in his income taxes in the amount of $139,999.87, including penalty and interest, and that certain tax liens against the property be declared valid, and that the liens be foreclosed. Finally, the Government sought judgment for any deficiency.[2]

allotted lands so that his allotted lands plus the grazing unit will become an economic farm unit. It would seem that several cattlemen can hold simultaneous permits on the grazing unit as long as the grazing capacity of the land will sustain more than one permit holder. The purpose of such grazing units is to promote the use of lands by Indians and enable them to earn a living and at the same time provide the highest yield for the tribe and other trust allotment holders. 25 CRF § 151.3 (See Appendix F)

2. The total amount of tax in its yearly computation can be found in the District Court opinion, Footnote 1, Appendix B. Seemingly, the Internal Revenue Service computed profit for a year, allocated 6.2% of the profit to defendant's own allotted fee acreage, and 93.8% to the lands of the grazing units. The Internal Revenue Service then taxed them 93.8%. Because Anderson believed the income to be exempt, he filed no Income Tax Returns for the years in question. For example, in 1966, the Internal Revenue Service determined through its own computations that Anderson had a gross income of $89,940.00 and a net taxable income of $59,055.00. The Internal Revenue Service ignored the fact that the grazing season on the unit was from May 1 to October 31, or just six months. Thus, an abnormally high degree of profit

The case was tried in the United States District Court of the District of Montana, 442 F. Supp. 10. The basis for Federal Court jurisdiction was 28 USC § 1340, 1345. Chief Judge James F. Battin ruled on summary judgment that the income allocable to profit made from grazing on grazing units of trust lands was not subject to Federal Income Taxation. The Court ruled so based on its reading of *Squire v. Capoeman*, 351 US 1 (1956), that if Congress and the Department of the Interior are to reach their goals of optimum Indian land use and eventual economic independence, income tax laws are not to impede those Federal objectives.

The Government appealed the District Court's summary judgment and the Ninth Circuit Court reversed and remanded. The Circuit Court, in a split decision, ruled that since there was no express exemptive language in a statute or treaty, Anderson's income from the grazing unit was taxable. The Court further added a tax exemption could not be based on general federal policy toward Indian land use. Finally, the Court rejected Anderson's claim that any such tax would be violative of the equal protection component of the 5th Amendment's due process clause. The Court reasoned that the rational relation test was applicable and met by the United States Government.

Judge Ferguson dissented, realizing that the result reached would hinder the Federal Policy towards Indians. (The majority readily admitted the debilitating effect of this decision on Federal Policy). Judge Ferguson disagreed with the majority's demand for express exemptive language. He stated that Courts must interpret Federal

was allocated to the grazing unit. Also, Anderson could not have possibily had a 64% profit as the Internal Revenue Service alleges. The figures which the Internal Revenue Service arrived at in computing both the net profit and that profit allocable to the grazing unit are arbitrary.

statutes and policies in a manner which does not thwart the intent of Congress, and the majority's failure to exempt Anderson's income from federal taxation did thwart the intent of Congress.

Argument

Petitioner believes that the United States Supreme Court should grant a writ of certiorari in this case because the Ninth Circuit has decided an important question of Federal law which has not been, but should be settled, by the United States Supreme Court. Furthermore, the Ninth Circuit has decided the same in conflict with *Squire v. Capoeman*, 351 US 1 (1956), and with Congressional intent as developed and embodied in Congressional statutes and Department of Interior policy.

I. The Majority's Opinion Applied An Erroneous Rule Of Construction With Regard To Indian Tax Exemptions, Which Rule Conflicts With Applicable United States Supreme Court Decisions.

The Ninth Circuit has based its rulings in this case on its conclusion that tax exemptions *with respect to Indian income derived directly from trust lands* must be found in "express exemptive language" in a statute or treaty. *United States v. Anderson*, 625 F. 2d 910,913 (1980). This conclusion is erroneous since it is contrary to the consistent holdings of the Supreme Court that such Indian tax exemptions must be found unless Congress legislates otherwise. The Court in *Carpenter v. Shaw*, 280 U.S. 363, 366-7, (1930) held that

> "While in general tax exemptions are not to be presumed and statutes conferring them are to be strictly construed, . . . the contrary is the rule to be applied to tax exemptions secured to the Indians by agreement between them and the government."

The rule of construction of the Ninth Circuit that "express exemptive language" in a statute or treaty must

be found before trust lands can be exempted from Federal taxation, was repudiated by the Supreme Court in *Squire v. Capoeman*, 351 U.S. 1 (1956). The United States Supreme Court accepted certiorari in *Capoeman* after a split between the Tenth and Ninth Circuits. In *Jones v. Taunah*, 186 F. 2d 445 (C.A. 10, 1951) Cert. denied 341 U.S. 904, the Tenth Circuit held that the income derived by an Indian from his restricted allotted lands was subject to Federal Income Tax in the absence of statutory provisions specifically exempting such lands from Federal taxation. The Court stated that exemptions from Federal taxation cannot rest upon implication.

The Ninth Circuit decision, *Squire v. Capoeman*, 220 F. 2d 349 (C.A. 9, 1955), dealing with almost identical tax issues and facts, held the opposite, specifically recognizing and specifically rejecting the Tenth Circuit decision of *Jones v. Taunah*.

The United States Supreme Court, on review of *Squire v. Capoeman*, 351 U.S. 1 (1956) held that a non-competent Indian's income from the sale of timber harvested from trust land allotted to him was not subject to Federal Income Tax. The Court found such exemption to be, in the Court's words, *implied* by the provisions of the General Allotment Act of 1887, Ch. 119, 224 Stat. 388, 25 USC § 331 and following, which required that the Government ultimately convey the allotted land to the Indian "free of all charge or incumbrance whatsoever." *Squire v. Capoeman, Supra* at 7-8. The Court in *Capoeman* held that this implied tax exemption had its foundation in the Act's policy of helping the Indians to become economically self sufficient. *Squire v. Capoeman* at 9-10. In reaching its decision, the Court's reliance upon a rule of construction favoring implied tax exemptions in cases of this nature was made obvious by its citation with approval of the United States Attorney

General's opinion (34 Op. Atty. Gen. 439, 449, 1925) that he was

> "(u)nable, by implication, to impute to Congress under the broad language of our Internal Revenue Acts an intent to impose a tax for the benefit of the Federal Government on income derived from the restricted property of these wards of the Nation. . .in other words, it is not lightly to be assumed that Congress intended to tax the ward for the benefit of the Guardian."

Squire v. Capoeman Supra at 8.

The Ninth Circuit followed the mandate that tax exemptions of *Indian income derived directly from the use of trust land* be found by *implication* in *Stevens v. Commissioner*, 452 F. 2d 741 (C.A. 9, 1971). The Court held that the tax exemption also applied to the income from trust lands which the Indian had acquired through gift, inheritance or purchase from other Indians. The Court stated at 744:

> "*Capoeman* is not a technical or narrow decision; nor is its holding limited to capital gains taxes. Rather the Court found implicit in section 5 and the amendment to section 6 of the General Allotment Act a 'congressional intent *to subject an Indian allotment to all taxes only after* a patent in fee is issued to the allottee!"(emphasis ours)

The Ninth Circuit in *Stevens* held the lands to be tax exempt even though the Fort Belnap Allotment Act, which applied to the trust lands involved in the *Stevens* case, did not contain the "free of incumbrance" language of the General Allotment Act. The Court, at 744, stated that Congressional intent was to be found by implication:

> "Federal Policy toward particular Indian tribes is often manifested through a combination of general

laws, special acts, treaties, and executive orders. All must be construed in *pari materia* in ascertaining congressional intent. *Kirkwood v. Arenas*, 9 Cir. 1957, 243 F. 2d 863, 867."

The Ninth Circuit in *United States v. Anderson* deviates from the rule that Indian tax exemptions are to be found by implication. The Court, in its majority opinion, cites *Commissioner v. Walker*, 326 F. 2d 216 (C.A. 9, 1964), *Choteau v. Burnet*, 283 U.S. 691 (1931), and *Fry v. United States*, 557 F. 2d 646 (C.A. 9, 1977) for the proposition that Indian tax emexptions may not be found by implication. These cases are totally distinguishable from the case at bar. The *Walker* case involved the issue of the taxability of an Indian's wages earned while acting as tribal treasurer. The *Choteau* case concerned the issue of the taxability of the income of a *competent* Indian. The *Fry* case involved the issue of the taxability of income earned by Indians hired as subcontractors to conduct logging operations on the reservation for a *non-Indian* logging company. The Ninth Circuit admitted in the *Fry* case that the subject income was not derived directly from the trust land but from a contract entered into by the Indians with the non-Indian logging firm. *Fry v. United States, Supra* at 648. Hence none of these cases involved the taxability of a *noncompetent Indian's income earned directly from trust land*, and such cases are therefore distinguishable from the instant case.

It must be noted that any dicta in such cases as *Walker, Fry* and *Holt v. Commissioner*, 364 F. 2d 38 (C.A. 8, 1966) to the effect that express exemptions must be found for Indian income derived directly from trust land are not only inconsistent with the Supreme Court's holding in *Squire v. Capoeman*, 351 U.S. 1, but are the statements of the Courts and *not* Congress. Hence, it is inherently the province of the *Courts*, not Congress, to

correct this improper erosion of the rule of construction concerning such Indian tax exemptions. Consequently, the majority's conclusion that Anderson must address his arguments to Congress, not to the Court's (*United States v. Anderson, Supra* at 917) is erroneous since it is the Courts' responsibility to apply the proper rule of construction with respect to Indian tax exemptions arising from the use of trust lands.

II. Explicit Congressional And Federal Policy Dictates That Anderson's Income Is Tax Exempt.

Given the proper rule of construction that tax exemptions concerning a noncompetent Indian's income derived directly from the use of trust land are to be found by implication, it is clear that such tax exemptions must be bottomed on Congressional and federal policy and not simply on the express words of a statute or treaty. Thus the Supreme Court in *Squire v. Capoeman,* 351 U.S. 1, *Supra,* recognized that it was necessary to "preserve" all of the Indian's income from his trust land in order to carry out the "purpose of the allotment system" under the General Allotment Act, 24 Stat. 388, 25 USC §331 and following, which was "to protect the Indians" interest and "to prepare the Indians to take their place as independent qualified members of the modern body politic."

Further, in *Stevens v. Commissioner,* 452 F. 2d 741, *Supra,* the Ninth Circuit found the tax exemption to exist, despite the absence of the General Allotment Act's "free of incumbrance" language, because of the fact that federal policy towards Indians is often manifested through a series of acts, statutes, treaties and executive orders, and that "all" of these "must be construed in *pari materia* in ascertaining Congressional intent". *Stevens v. Commissioner, supra,* 452 F. 2d at 744.

As the majority opinion in *United States v. Anderson,* 625 F. 2d 910, 912, notes, the General Allotment Act

failed miserably to carry out its purpose in making the Indians economically self sufficient through their assimilation into white society. To remedy this situation, Congress passed the Indian Reorganization Act of 1934, 48 Stat. 984, 25 USC §461-479 (hereinafter referred to as "IRA"). The IRA sought to make Indians economically self sufficient through the consolidated use of Indian trust land. The IRA thus terminated the allotment process, extended the trust period indefinitely, and encouraged the tribes to preserve and utilize their land for the benefit of the individual tribal members. Thus under the IRA, Indian trust land, instead of being divided into allotments, was to be divided into range grazing units, allowing tribal members to use such by permits issued on a temporary basis. Such economic units would replace the allotment as the means by which the individual Indian would achieve economic self reliance.

The then Commissioner of Indian Affairs, John Collier, in his written statement of support for the IRA ("The Purpose and Operation of the Wheeler-Howard Indian Rights Bill" as reported in Senate Report 2755, 73rd Congress, 2nd Session, February 27, 1934) evaluated the IRA as a very positive step for the tribes. After stating that the IRA would not take anything from the tribes but would only add to the property and the advantages of such tribes, he went on to discuss the positive aspects the IRA would have:

> "The bill seeks to establish the legal conditions through which the Indian will be released from economic and social imprisonment and will begin to work out a real destiny in America.
>
> It provides him with economic security against the wastage of his assets.
>
> It provides him with a workable plan of land management and development whereby he can

achieve economic independence.

It promotes his individual enterprise in farming, livestock growing, and other forms of land use. Community land ownership, where established, will be a means to prevent land alienation and to secure economic land use; but the use of the land will remain primarily individual.

****

The consolidation of Indian lands, made possible by the bill, will not be an instrument of isolation, but an indispensable means of putting Indian lands (especially forest and grazing land) into units for profitable and conservative management. The land program of the bill fits in closely with the larger program of intelligent land use for white-owned and public-domain lands now being worked out by this administration. In no sense does it imply exclusion from, or lack of contact with, the white world. *It makes possible at least a modest competition of Indians with their white neighbors* in place of the inferiority status which economic and social disintegration has forced on so many Indians.

Having thus determined the extent of the interests of the various individual Indians, Title III, Sec. 9, authorizes the Secretary to make assignments of land according to the extent of such individual interest. Since land can be used in small individual units for farming and domestic purposes without destroying the economic unit, the Secretary may assign to individuals the right of exclusive occupancy of such units. . . In brief, grazing units will be enjoyed in common by large groups.

Section 16 proclaims exemption of all lands from taxation."(emphasis applied)

Let us briefly recapitulate the Congressional purpose and intent underlying the IRA. The Act was intended to remedy the disastrous effects of the General Allotment Act by curtailing the allotment system, by withdrawing unallotted reservation land from entry and settlement by white men, by the purchase of additional land for reservations, and by encouraging a consolidated and community-controlled use of reservation land by individuals of the tribe. Congress, and the Department of the Interior through the voice of Commissioner Collier, felt that the foregoing provisions would make "possible at least a modest competition of Indians with their white neighbors". This ability to compete was to be enhanced through the exemption of *all* Indian lands from taxation.

The Ninth Circuit in *Stevens v. Commissioner, Supra,* correctly adhered to the reasoning of the Supreme Court in *Squire v. Capoeman* by holding that the economic units (in our case, grazing units) must be construed in *pari materia* with allotments under the General Allotment Act. Just as the income from the allotment was ruled to be tax exempt in furtherance of Congressional policy underlying the allotment system, *Squire v. Capoeman, Supra* at 9, so must the income derived from economic units under the IRA be ruled tax exempt pursuant to the same basic Congressional policy.

In the instant case, Anderson's income was derived from a grazing unit established by the Fort Peck Tribes pursuant to Section 6 of the IRA. The majority opinion of the Ninth Circuit failed to consider Anderson's grazing unit in *pari materia* with the tax exempt allotments established under the General Allotment Act. In this respect, the majority is in error.

It is essential to note that officials of the Department of the Interior, including then Commissioner of Indian Affairs John Collier, prior to the enactment of the IRA, gave both Congress and the Indians assurances such as that "all" the "lands" governed by the act would be

exempt from taxation, and that the tax free period confirmed by the General Allotment Act would be "continued indefinitely" under the IRA (see discussion above). As the Agency charged with the administration of Indian laws and responsible for drafting many of them, Interior's interpretation is entitled to "great weight" and "is not to be overturned unless clearly wrong. . . ." *United States v. Jackson*, 280 U.S. 183 (1930); *Stevens v. Commissioner, Supra.*

The majority opinion of the Ninth Circuit in the instant case (at 915, footnote 8) attempts to sidestep Interior's interpretation arguing that such statements do not constitute an administrative interpretation of the act as finally passed. However, it is clear that the Department of the Interior adheres to the same interpretation of the IRA even to the present day. Thus, as quoted by the Ninth Circuit in *Stevens v. Commissioner, Supra,* at 746 (1972) the Department "makes no distinction between the trusts which were established pursuant to the General Allotment Act of 1887 and those established pursuant to the Indian Reorganization Act of 1934," and in *United States v. Critzer,* 498 F. 2d 1160, 1161 and 1162 (C.A. 4, 1974) the Court noted Interior's interpretation that economic units in the form of possessory holdings established pursuant to the IRA are tax exempt to the same extent as trust and restricted allotments.

In a later proceeding of the same case, the Court of Claims in *Critzer v. United States,* 597 F. 2d 708 (Ct. Cl., 1975), review denied___U.S.____,100 S.Ct. 239 (1979), analyzed the taxability of possessory holdings under the IRA. Critzer, an enrolled member of the tribe, operated a motel, restaurant, gift shop, etc. on a possessory holding. A possessory holding is an exclusive right to use land being held in trust by the Eastern Brand of Cherokees. The land was not allotted as the IRA was passed before any allotments of tribal land were made, precluding allotments. After an analysis of *Capoeman,*

the Court denied a tax exemption for income derived from the businesses stating that *Capoeman* holds that income is tax exempt if it is *directly derived from the land.* The Court ruled that Amy Critzer was deriving her income from improvements and business activities. However, by doing so, the Court reasserted the rule that income directly derived from economic units of land established under the IRA is exempt from taxation.

III. Although Expressed Statutory Language Of Exemption Is Not Necessary Here, Section 16 Of The IRA Provides Such Language.

In light of the rule of construction that Indian tax exemptions in cases involving income arising directly from the use of trust land are to be found by implication, and in light of the explicit Federal and Congressional policy which is at odds with the taxation of income derived from grazing units established pursuant to the IRA, it is clear that expressed statutory or treaty language need not be sought to support the tax exemption of Anderson's income. However, even if such expressed language were necessary, Section 16 of the IRA can provide the expressed exemption. Section 16 provides:

> "In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers. . . *to prevent the sale disposition, lease, or encumbrance of tribal lands, interests in, or other tribal assets without the consent of the tribe.*". (emphasis applied)

25 USC, Sec. 476.

The tribes' power under Section 16 to prevent the "encumbrance" or other disposition of tribal lands and assets should be construed under *Stevens v. Commissioner, Supra,* in *pari materia* with the General Allotment

Act's provision that the allotments would ultimately be conveyed "free of all charge or incumbrance" to the Indian. Thus Section 16's language creates a tax exemption just as did the comparable language of the General Allotment Act as construed in *Squire v. Capoeman, Supra.*

The majority opinion of the Ninth Circuit decision argues that Section 16 must be construed restrictively such that its language cannot be considered to confer tax exemption. Such a restrictive reading is contrary to the fundamental rule that in legislation and treaties dealing with Indians,

> "The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation, and dependent wholly upon its protection and good faith. This rule of construction has been recognized, without exception, for more than one hundred years, and has been applied in tax cases."

Choate v. Trapp, 224 U.S. 665 (1911). Cited with approval in *United States v. Santa Fe Railroad Company,* 314 U.S. 339 (1941); *Antoine v. Washington,* 422 U.S. 373 (1975); *Bryan v. Itasca County, Minnesota,* 426 U.S. 373 (1976); *Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978).

The majority opinion of the Ninth Circuit, *Supra* at 916, also concludes that Section 16 of the IRA is not applicable to the Fort Peck Tribes since the tribes in 1934 voted against application of the IRA. However, Section 16 was merely a confirmation of existing law at the time of its enactment. The Fort Peck Tribes, as a quasi-sovereign entity, in 1934 already possessed the powers enumerated in Section 16 with respect to its reservation land. Such powers were implicitly *reserved* to the tribes

when in 1886 they entered into a treaty with the United States and agreed to restrict their livelihood and quasi-sovereign status to the Fort Peck Reservation. 25 Stat. 113. Thus, the tribes have adopted a constitution which has been approved by the Secretary of Interior pursuant to the same Section 16. This constitution purposely implements the intent and provisions of the IRA in its entirety. Finally, Anderson was issued a grazing permit pursuant to 25 CFR Sec. 151.1 and following. As stated above, these regulations are authorized by and bottomed on the IRA, Sec. 6, 25 USC 466.

A three judge District Court concluded that the election requirement of Section 18 of the IRA, 25 USC Sec. 478, was to affect only Section 16 and 17, 25 USC. 476 and 477, and that a vote against those provisions would not affect the remainder of the IRA. *Morton v. Mancari*, 359 F. Supp. 585, 588 (D.N.M.,1973), reversed on other grounds, 417 U.S. 535. The Court was discussing the applicability of the Indian preference portion of the Act, 25 USC Sec. 472. Petitioner asserts that the election requirement of Section 18, 25 USC Sec. 478 can reasonably be limited to the tribal organization provisions of Section 16 and 17, 25 USC Sec. 476 and 477 and not inclusive of the powers listed in the second half of Section 16, 25 USC Sec. 476. As stated above, all of the powers enumerated in the second paragraph of Section 16, 25 USC Sec. 476 with respect to the tribe's reservation land were already possessed by the tribe. Finally, Section 6 of the Act, 25 USC Sec. 466, is still applicable to the Fort Peck Tribe under the rationale of *Morton v. Mancari*. The resulting regulations are 25 CFR Sec. 151.1 and following.

We believe that Judge Battin correctly phrased the Federal policy and its impact on taxation when he stated:

> "However, the Court is convinced that a full effectuation of Federal Indian land use policies requires

that income derived from grazing units be free from tax.

> The inefficient use of Indian lands under the Allotment Act was one of the major concerns of Congress in enacting subsequent legislation. This concern is reflected in the heavy emphasis on land use in the Reorganization Act and in the regulations promulgated thereunder by the Secretary of Interior. It is clear that the Federal Government, specifically the Congress and the Department of the Interior, are most concerned about promoting optimum Indian land use and eventual economic independence."

United States v. Anderson, 442 F. Supp. 10, 13 (1977).

Judge Battin correctly viewed Federal Indian policy in its broadest context.

> "As the Court noted in *Squire*, '(i)t is unreasonable to infer that, in enacting the Income Tax Law, Congress intended to limit or undermine the Governments' undertaking. 351 U.S. at 10, 76 S.Ct. at 617. The Court will not draw such an inference in this case. The taxation of income from grazing permits impedes the achievement of the Government's land use objectives. The Court therefore concludes that such income is tax exempt."

United States v. Anderson, Supra.

IV. Taxation Of Anderson Income Here Is A Violation Of The Equal Protection Component Of The Fifth Amendment.

The majority opinion (*Supra* at 917) notes that Anderson has argued that if his income in question is held to be subject to Federal Income Taxation, such tax is unconstitutional as a violation of the equal protection component of the Fifth Amendment. Such taxation would result in differing treatment of the following classes:

(1) noncompetent Indians who buy the equitable fee to land held in trust for other Indians (that income from such land is nontaxable under *Stevens v. Commissioner, Supra*), and (2) noncompetent Indians who buy licenses to use land which is held in trust for others (taxable). Also treated differently in such case would be (1) noncompetent Indians who derive income from their own trust land (such income is nontaxable under *Squire v. Capoeman, Supra*) and (2) noncompetent Indians who derive income from land held in trust for others (taxable).

The majority's opinion states that equal protection is not violated by such differing treatment because Congress could "rationally" want to help Indians by exempting them from tax on income derived from their own trust land, but refuse to extend the additional benefit of allowing them to market the advantage of tax exemptions to others while still retaining the equitable fee in the land.

How can such differing treatment possibly be termed "rational" when the explicit purpose of Congress in the IRA was to terminate the allotment process and discourage individual ownership of trust land and to encourage tribal ownership and consolidated use of all trust land? How can such differing treatment by any stretch of the imagination be called "rational" when Interior officials, including the Commissioner of Indian Affairs, Collier, who helped draft the IRA legislation, unequivocally assured Congress and the tribes that the tax free status would extend to all lands and economic units administered under the IRA? It is clear that not only is such differing treatment irrational but it was simply not within the intent of Congress.

No sane reason can be advanced for isolating a noncompetent Indian's income derived from his permissive use of trust land and holding that such income, uniquely, is taxable. Such a singling out of this type of income not only contravenes explicit Congressional and Federal policy but results in a disruptive patch work tax structure

which will substantially inhibit the economical administration and use of trust land by noncompetent Indians.

If the majority opinion of the Ninth Circuit stands, tribes will be forced into other methods of gaining optimum use out of the trust lands, which will ultimately prove less economical for the tribes. Thus the Congressional intent of the IRA will be emasculated.

Futhermore, the logic of the Internal Revenue Service seems faulty. If the precedent of *United States v. Anderson* is allowed to stand, Anderson can buy hay grown on trust land other than his own, feed it to his cattle on his own allotment, and thus any profit would be tax exempt. However, if Anderson pastures his cattle on the grazing units consisting of the trust land of others, a practice more economical, as well as being sound ranching procedure, any profit will be taxable. This rule of law, if allowed to stand, will be irrational, arbitrary, and absurd.

It seems clear that the most rational way to gain the optimum use of the trust lands is to administer them in the way that has been set by regulation. Since tax exemptions for Indians based on income derived from trust land were crucial to the IRA's admitted policy promoting "eventual economic independence", the only reasonable conclusion is that the tax exemption applies to the entire unified operation under the IRA.

Conclusion

Circuit Judge Ferguson was therefore correct when, in his dissenting opinion, he noted that cases involving a noncompetent Indian's income arising directly from his use of trust land are not to be viewed as ordinary tax cases. Judge Ferguson recognized, as the foregoing analysis has shown, that tax exemptions in such cases may be found by implication and by reference to Congressional policy. As Judge Ferguson stated, the majority's opinion fails to recognize that Courts must

interpret Federal statutes and policies in a manner which does not thwart the intent of Congress. *United States v. Anderson* 625 F. 2d 910, 918 (1980). When we consider the question of tax exemption of income from Indian lands, "(w)e are dealing not with a word, nor with an act, but with a course of history. . . " (Dissenting opinion of Justice Murphy in *Oklahoma Tax Commission v. United States*, 319 U.S. 598, 623 (1943).

Since the majority's opinion herein fails to apply the proper rules of construction set forth by the Supreme Court in *Squire v. Capoeman, Supra,* and since the taxation of Anderson's income as sanctioned by the majority, contravenes federal policy and violates the equal protection component of the Fifth Amendment, it is respectfully urged that a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted this 24th day of December, 1980.

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In The

Supreme Court of the United States

October Term, 1980

No. 80 _____

THE UNITED STATES OF AMERICA,
Respondents

v.

GEORGE ANDERSON,
Petitioner

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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APPENDIX A

OPINION

UNITED STATES OF AMERICA,
Plaintiff-Appellant

v.

GEORGE ANDERSON,
Defendant-Appellee

No. 78-1114 DC No.
CV 75-1-HG

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
August 21, 1980

Appeal from the United States District Court
for the District of Montana

Argued and submitted May 22, 1980
Decided: August 21, 1980

Before: CHOY and FERGUSON, Circuit Judges, and BARTELS,* District Judge.

CHOY, Circuit Judge:

The Government appeals from the district court's summary judgement holding that the income a noncompetent Indian derives from cattle ranching, under a tribal license, on land held in trust by the United States for other Indians and for the tribe is not subject to federal income taxation. We reverse.

*The Honorable John R. Bartels, Senior United States District Judge for the Eastern District of New York, sitting by designation.

I

Background

Congress enacted the General Allotment Act of 1887, ch. 119, 24 Stat. 388, 25 U.S.C. § 331 *et. seq.*, to conform Indian land ownership to the individual property ownership system existing in the United States. The United States divided reservations into uniform parcels and held one such 'allotment' in trust for each individual Indian and his heirs. The General Allotment Act failed to assimilate Indians by making them yeomen, as was originally intended. Allotments could not be pledged for credit, and when original allottees died each of their heirs received in trust a parcel so small that it could not be efficiently grazed or farmed.

The General Allotment Act provided that at the end of the statutory trust period (subject to extension), Indian allottees were to receive their lands 'in fee, discharged of said trust and free of all charge or incumbrance whatsoever,' and that then 'all restrictions as to sale, incumbrance, or taxation of said land shall be removed.' §§5, 6, 25 U.S.C. §§ 348, 349. The courts have construed this language to exempt from federal taxation the land held in trust for an Indian and the income that the Indian derives from it. *Squire v. Capoeman*, 351 U.S. 1 (1956); *Stevens v. Commissioner*, 452 F.2d 741 (9th Cir. 1971).

In 1934 Congress abandoned the General Allotment Act's emphasis on individual ownership and passed the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984, 25 U.S.C. §§ 461-479 [hereafter "IRA"]. The Government was authorized and encouraged to acquire land in trust for the tribes, and tribal constitutions, councils and corporations were authorized. IRA §§ 5, 16, 17; 25 U.S.C. §§ 465, 476, 477. The Secretary of the Interior was authorized to make regulations to facilitate optimal use of reservation land. IRA § 6, 25 U.S.C. § 466.

Like many other tribes, the Fort Peck Tribes adopted a

land-use program based on the principle of consolidation of parcels for efficient use. The Fort Peck Tribal Executive Board, under the supervision of the Bureau of Indian Affairs, markets the right to graze cattle on the trust land held by the United States for the tribe itself, for Indians unable to use the land themselves (orphaned minors, missing persons, etc.) and for any other allottees willing to participate. The Executive Board, with the Bureau's supervision, establishes grazing regulations and combines these parcels into suitably large grazing "units"; then the Bureau and the Executive Board sell licenses to graze cattle on the units to ranchers for a term of years.[1] Preference is given to Indian ranchers. The proceeds from the sale of licenses are distributed ratably to the equitable "landowners."

Anderson, a "noncompetent"[2] Sioux member of the Fort Peck Tribes, is a cattle rancher. His headquarters are on his own allotted land, but he grazes his cattle, under tribal license, on a land-use program "unit" consisting of parcels held in trust by the United States for several noncompetent Indians (but not for Anderson) and for the Tribes. The Government concedes that Anderson's income, if any, allocable to his own allotted land is tax-

1. In addition to this involvement in the land-consolidation and licensing program, the federal government makes substantial expenditures to aid productive land use on the Fort Peck Reservation.

2. By the terms of the trust under which the United States holds Anderson's allotted land, he is "noncompetent" to alienate it without the United States' permission. The term "noncompetent" in no way implies that Anderson is *non compos mentis*. Stevens v. Commissioner, 452 F.2d 741, 742 n. 1 (9th Cir. 1971).

free, but seeks to collect taxes on his income, if any, allocable to the grazing unit.[3]

The district court below, relying on the regulations under IRA § 6, 25 U.S.C. § 466, held on summary judgement that the federal policies of promoting optimal land use on Indian reservations and eventual Indian economic independence precluded all taxation of the income Anderson derived from the licensed grazing unit. *United States v. Anderson*, 442 F. Supp. 10, 13 (D. Mont. 1977).

II

Analysis

Despite our sympathy for Anderson and similarly situated Indians, we must reverse the district court. Other courts have held, and we are forced to agree, that a non-competent Indian's income allocable to cattle grazing on other's trust land is taxable. *Holt v. Commissioner*, 44 T.C. 686 (1965), *aff'd*, 364 F. 2d 38 (8th Cir. 1966), *cert. denied*, 386 U. S. 931 (1967); *Stevens v. Commissioner*, 52 T.C. 330 (1969);[4] *see also Strom v. Commissioner*, 6 T.C. 621 (1946), *aff'd*, 158 F. 2d 520 (9th Cir. 1947).

3. A noncompetent Indian's income from "non-land-based" businesses conducted on his trust land is taxable; for example, income from a law practice would be taxable, whereas income from mining or agriculture would not be. *See* Critzer v. United States, 597 F.2d 708 (Ct. Cl.), *cert. denied*, 100 S. Ct. 239 (1979) (income from motel/restaurant/gift shop on possessory holding — similar to an allotment — is taxable, at least in part, because derived primarily from personal investment and services rather than from the land itself). However, the IRS has conceded that income obtained from grazing one's own cattle on one's own trust allotment, or from licensing or leasing grazing rights to another, is obtained "directly" from the land and is tax-free. Rev. Rul. 56-342, 1956-2 C.B. 20; Rev. Rul. 62-16, 1962-1 C.B. 7.

4. The question of Stevens' taxability on income derived from grazing cattle on land held in trust for other Indians and for his tribe was not appealed to this Court, and thus was not decided in our Stevens v. Commissioner, 452 F.2d 741.

A. The Requirement of an Explicit Exemption

By its terms, the federal income tax applies to "every individual" and "all income from whatever source derived." I.R.C. §§ 1, 61. "Indians are subject to payment of federal income taxes, as are other citizens, unless an exemption from taxation can be found in the language of a Treaty or Act of Congress." *Commissioner v. Walker*, 326 F.2d 261, 263 (9th Cir. 1964).

The rule that ambiguous statutes and treaties are to be construed in favor of Indians applies to tax exemptions, *Choate v. Trapp*, 224 U.S. 665, 675 (1912); *see, e.g., Squire v. Capoeman*, 351 U.S. 1 (1956) (construing General Allotment Act §§ 5-6 to create exemption from not-yet-created federal income tax), but this rule "comes into play only if such statute or treaty contains language which can reasonably be construed to confer income (tax) exemptions." *Holt v. Commissioner*, 364 F.2d 38, 40 (8th Cir. 1966) (before panel including Blackmun, J.), *cert. denied*, 386 U.S. 931 (1967). "The intent to exclude must be definitely expressed where, as here, the general language of the Act laying the tax is broad enough to include the subject matter." *Choteau V. Burnet*, 283 U.S. 691, 696 (1931).

We could uphold the district court's summary judgment for Anderson only if we could find express exemptive language in some statute or treaty. Anderson and the amici direct our attention to the General Allotment Act and the IRA, but we find nothing there to support Anderson's position.

1. The General Allotment Act of 1887

The only provisions of the Act[5] that could support Anderson are those involved in *Capoeman*: sections 5 and 6, 25 U.S.C. §§ 348, 349. Section 5 declared that the Secretary of the Interior shall issue patents to allottees saying that the United States will hold the land "in trust for the sole use and benefit" of the named Indian for 25 years (plus and period of extension), "and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and *free of all charge or incumbrance whatsoever*" (emphasis added).

Section 6 declared that at the expiration of the trust period, or when the Secretary of Interior is sooner satisfied that the Indian is competent, an allottee shall be issued a patent in fee simple, "and thereafter all *restrictions as to* sale, *incumbrance, or taxation* of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent" (emphasis added).

In *Squire v. Capoeman*, 351 U.S. 1 (1956), the Supreme Court construed these sections to create an express tax exemption for an Indian deriving income directly from his own trust allotment.[6]

5. The allotment provisions of the General Allotment Act would overbear those of the 1888 treaty with the Fort Peck Tribes if the latter were more unfavorable to the Indians, because the acts must be construed in *pari materia*. *See* Stevens v. Commissioner, 452 F.2d at 744, 746; Kirkwood v. Arenas, 243 F.2d 863, 867 (9th Cir. 1957). For the same reason, the provisions of the General Allotment Act relating to land held in trust for individual Indians also apply to land held in trust for tribes under the IRA. *See* Stevens v. Commissioner, 452 F.2d at 745-46.

6. The Supreme Court noted that the purpose of the General Allotment Act was to bring Indians to the point where they could compete with whites in the economic world. Therefore the Government should not be allowed to tax Capoeman's timber sales; after logging

What distinguishes Anderson's case from *Capoeman* is that there "the income which was held to be exempt to the allottee was from operations conducted *on his own allotted land.*" *Fry v. United States*, 557 F.2d 646, 648 (9th Cir. 1977) (emphasis in original), *cert. denied*, 434 U.S. 1011 (1978). In *Fry*, we held that a noncompetent Indian engaged, as a subcontractor to a non-Indian company, in logging on tribal trust land was taxable. There, we recognized that *Capoeman*'s point was that if an Indian's allotted land (or the income directly derived from it) was taxed, and the tax was not paid, the resulting tax lien on the land would make it impossible for him to receive the land free of "incumbrance" at the end of the trust period. The purpose of §§ 5 and 6 was "to provide the allottee with unencumbered land when he became competent. (Citation) It was not to benefit him simply because he was an Indian, or to benefit Indians generally." *Id.* at 649 (foornotes omitted). By contrast, "taxation of the taxpayer's individual profit derived from his lease of tribal (or other allottees' trust) land cannot possibly represent a burden or encumbrance upon the tribe's (or other allottees') interest in such land." *Holt v. Commissioner*, 364 F.2d at 41.

off, his land would be worthless, and could no longer "serve the purpose of bringing him finally to a state of competency and independence. Unless the proceeds of the timber sale are preserved for respondent, he cannot go forward when declared competent with the necessary chance of economic survival in competition with others." 351 U.S. at 10.

Anderson's reliance on this passage is misplaced. Capoeman and every other Supreme Court and Ninth Circuit case have held that such policy arguments are fruitless in the absence of statutory or treaty language that arguably is an express tax exemption. Such policy arguments, however, might persuade courts to construe such arguable language, if any exists, actually to be an express tax exemption.

Therefore, the General Allotment Act provides no tax exemption for the income a noncompetent Indian derives from *other* Indians', or his tribe's, trust land.

It is argued that we sould give a broader meaning to the word "incumbrance," and recognize that taxation of Anderson "encumbers" the interest of the noncompetent Indians whose land he uses under land-use program licenses. If the use of the land subjects Anderson to federal income tax, the right to use it is worth less to him, and he will probably not be willing to pay as high a license fee as he otherwise would. Therefore, federal taxation of Anderson theoretically reduces the (tax-free) licensing income of other noncompetent Indians. *See Agua Caliente Band of Mission Indians v. County of Riverside*, 442 F.2d 1184, 1186 (9th Cir. 1971), *cert. denied*, 405 U.S. 933 (1972).

Nonetheless, this effect is not a General Allotment Act "incumbrance." Federal taxation of a (non-Indian) lessee of tribal trust land is permissible even if it has a "perceptible economic effect" on the tribe. *Heiner v. Colonial Trust Co.*, 275 U.S. 232, 234-35 (1927). We were not deterred by this argument when, in *Fry*, we upheld federal taxation of a noncompetent Indian subcontractor engaged in logging on tribal trust land.[7] 557 F.2d at 649 n.7.

2. Indian Reorganization Act § 5

Section 5 of the IRA, 48 Stat. 987 (25 U.S.C. § 465), reads in pertinent part, "Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such

7. If taxation of licensees was, on this theory, an "incumbrance," enforcement of antitrust, pure food, safety and health, etc., laws against licensees would similarly constitute impermissible "incumbrances."

lands or rights shall be *exempt from State and local taxation*" (emphasis added).

This language obviously negatives any Congressional intent to create an exemption from federal tax, particularly in light of language in a predecessor bill that would have forbidden all "taxation" of trust land. *See* S.2755, H.R. 7902, 73rd Cong., 2d Sess. § 16 (1934).[8]

The amici claim that noncompetent Indians were not considered federally taxable in 1934; therefore, they contend that we should ignore the rule of *inclusio unius est exclusio alterius* and read IRA § 5 to create a federal tax exemption. In fact, the Board of Tax Appeals held on December 26, 1933, that a noncompetent Indian's reinvestment income was federally taxable. *Superintendent v. Commissioner*, 29 B.T.A. 635 (1933), *aff'd*, 75 F.2d 183 (10th Cir.), *aff'd*, 295 U.S. 418 (1935).

Finally, the Supreme Court has held that, even as to state and local taxes, IRA § 5 provides an exemption only from property taxes, not from income taxes. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 155-58 (1973). Thus § 5 is hardly an exemption from federal income taxation.

3. Indian Reorganization Act § 6

The General Allotment Act was in no way an undertaking by the Government to manage the land resources of Indian reservations for the optimum economic benefit of the Indians. *See United States v. Mitchell*, ___U.S. ___, ___, 48 U.S.L.W. 4365, 4367-68 (1980). On the other hand, the IRA did involve such an undertaking. IRA § 6, 25 U.S.C. § 466, reads:

8. Interior's representations to certain tribes regarding the tax exemption of the predecessor bill do not, of course, constitute an administrative interpretation of the bill as finally passed or estop the Commissioner from now asserting that the very different language of IRA § 5 has a more limited effect.

> The *Secretary of the Interior is directed to make rules and regulations* for the operation and management of Indian forestry units on the principle of sustained-yield management, to restrict the number of *livestock grazed* on Indian range units to the estimated carrying capacity of such ranges, and to *promulgate such other rules and regulations* as may be necessary to protect the range from deterioration, to prevent soil erosion, *to assure full utilization of the range, and like purposes.*

(Emphasis added.) Under this statute, Interior has promulgated the regulations underlying the Fort Peck Tribe's land-use program.

It is obvious that § 6 is not, on its face, an express tax exemption. Interior has not attempted to use § 6 to promulgate a regulation exempting Indians such as Anderson from tax, so we need not decide what effect such an attempt would have. All § 6 and the promulgated regulations bring to this case is a federal *policy* in favor of efficient land use on Indian reservations, a policy hindered by the result we reach today. *See* Part II.B, *infra*.

4. Indian Reorganization Act § 16

IRA § 16, 25 U.S.C. 476, provides that any tribe (which voted to come under the IRA) may adopt a constitution, which "shall vest in such tribe or its tribal council" the right and power "to *prevent* the sale, disposition, lease, or *encumbrance* of tribal lands, interests in lands, or other tribal assets without the consent of the tribe" (emphasis added). It is asserted that because the Tribes have not consented to federal taxation of the licensee of their trust lands, such taxation is an illegal "encumbrance."

Even if this argument were valid, it would not benefit Anderson, for IRA § 16 does not apply to the Fort Peck Tribes. Congress explicitly commanded in IRA § 18, 48 Stat. 988 (25 U.S.C. § 478), that:

> This act shall not apply to any reservation wherein

> a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year (later extended to two years) after the passage and approval of this Act, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

The Fort Peck Tribes voted against the Act. Many years later, they recanted; they adopted a tribal constitution in 1960, and have since behaved and been treated by Interior exactly as if they were IRA tribes. Nonetheless, the explicit language of § 18 does not disappear from our view simply because Interior chooses to wink. If the Tribes wish to be relieved from the effects of their negative vote, they must seek such relief from Congress.

A three-judge district court concluded that the election requirement of § 18 was intended to affect only §§ 16 and 17, 25 U.S.C. §§476, 477, and that a vote against the IRA would not affect the applicability to the tribe of the remainder of the IRA. *Mancari v. Morton*, 359 F. Supp.585, 588 (D.N.M. 1973), *rev'd on other grounds*, 417 U.S. 535 (1974). We agree.[9] Thus, the Fort Peck Tribes' vote against the IRA precludes the application of § 16 here, even if that section created a federal tax exemption.

However, even if § 16 were available to the Fort Peck Tribes, it would not promote Anderson's cause. *See Fort Mojave Tribe v. County of San Bernadino*, 543 F.2d 1253, 1256 (9th Cir. 1976) (516 does not preclude state taxation of leasehold of tribal land), 430 U.S. 983 (1977). The word "encumbrance," read in context and *in pari materia* with General Allotment Act § 5, *see Stevens v. Commissioner*, 452 F.2d at 746, refers only to a tribe's

9. The language of 25 U.S.C. § 478, the codified version of § 18, is inconsistent with our holding and should be disregarded.

power to prevent the unconsented encumbrance of its land interests by removing from its agents and members the legal authority to alienate or cloud, without official tribal consent, its equitable title to its trust land. Moreover, no provision in a tribal constitution could limit the taxing power of the United States, a superior sovereign, any more than such a provision in a state constitution could.

B. The Insufficiency of Policy Alone

In the absence of express exemptive language, it was error for the district court to create for Indians a federal tax exemption based on policy alone.

> [It] is one thing to say that courts should construe treaties and statutes dealing with Indians liberally, and quite another to say that, based on those same policy considerations which prompted the canon of liberal construction, courts themselves are free to create favorable rules . . . Congress is the body which grants tax exemptions . . . ". . . [T]ax exemptions are not granted by implication."

Fry v. United States, 557 F.2d at 649.

If federal courts were free to create federal tax exemptions for Indians based on policy alone, the federal policy of Indian economic advancement, implicit in almost all of the many federal enactments regarding Indians[10], would soon have the unintended effect of exempting all Indians from all federal taxation. Nor is any other policy sought to be promoted by the IRA sufficient to defeat explicit taxing language. We have held that, in the absence of any express tax exemption, the noncompetent treasurer of a tribal council, a key officer of a body essential to the purposes of the IRA, is taxable on his salary even though the funds that paid his salary were derived directly from

10. *See, e.g.*, the special statutory rehabilitation program in *Holt*, under which the taxpayer received a loan of $10,000 worth of cattle and equipment.

tribal trust lands, and even though such taxation lessened the attractiveness of the office. *Commissioner v. Walker*, 326 F.2d at 261.

We hold that policy can create no federal income tax exemption when unaccompanied by express exempting language in a statute or treaty. Anderson must address his policy arguments to Congress, not to the courts.[11]

C. Equal Protection

Anderson contends that if we decide the federal income tax applies to him, we should declare the tax unconstitutional as applied for violating the equal protection component of the Fifth Amendment's due process clause.

The classes Anderson says are treated differently are (1) noncompetent Indians who buy the equitable fee to land held in trust for others (nontaxable, under *Stevens*), and (2) noncompetent Indians who buy licenses to use land held in trust for others (taxable). Also, says Anderson, the Government treats differently (1) noncompetent Indians who derive income from their own trust land (nontaxable, under *Capoeman*), and (2) noncompetent Indians who derive income from land held in trust for others (taxable).

These are not suspect classifications, and no fundamental interest is involved. Therefore the rational relation test applies, and the classifications "will not be set aside if any state of facts rationally justifying [them] is demonstrated to or perceived by the courts." *United States v. Maryland Savings-Share Insurance Corp.*, 400 U.S. 4, 6 (1970). Congress could rationally want to help Indians and tribes by exempting them from tax on income

11. When federal policy conflicts with state attempts to tax or regulate Indians, the Supremacy Clause may come into play. *See, e.g.*, White Mountain Apache Tribe v. Bracker, ___ U.S. ___, ___. 48 U.S.L.W. 4897, 4901 (1980). We deal here, however, with a conflict between federal indian policy and an explicit federal tax statute.

derived from their own trust land, but refuse to extend the additional benefit of allowing them to market the advantage of tax exemption to others while still retaining the equitable fee in the land.

Therefore, this taxation of Anderson does not deprive him of equal protection.

III.
Conclusion

The district court erred in holding that federal policy prevented the IRS from taxing the portion of Anderson's income allocable to cattle ranching on trust land licensed from other noncompetent Indians and the Tribes. Policy alone cannot support a federal tax exemption in the absence of express exemptive language in a statute or treaty. Finding no such language here, and rejecting Anderson's equal protection argument, we REVERSE the district court's summary judgment and REMAND further proceedings.

United States v. Anderson — No. 78-1114

FERGUSON, Circuit Judge, dissenting:

The result reached here, as the majority admits, will hinder federal policy toward the Indians. I must therefore dissent.

By adopting statutes which attempt to assist Indians in becoming economically self-sufficient, Congress intended to exempt noncompetent Indians from federal income taxation when income is derived from lands held in trust for Indians. Judge Battin was therefore correct when he held that federal policies and statutes regarding Indians created an exemption for Anderson from federal income taxation for the income derived from grazing cattle on land held in trust for other noncompetent Indians and his tribe.

The majority fails to give effect to the reason and logic of the opinion of the Supreme Court in *Squire v. Capoeman*, 351 U.S. 1 (1956). The Court found in that case that the income which came directly from the land was tax-exempt. It specifically rejected the argument that the case should be viewed as an ordinary tax case without regard to relevant treaties and statutes, congressional policy concerning Indians, or the guardian-ward relationship existing between the United States and Indians. In determining that the income at issue here was tax-exempt, Judge Battin found, as did the Supreme Court, that those matters were relevant, and that they required a holding that Anderson's income was not subject to federal taxation.

Judge Battin's decision is consistent with the proposition, stated by the Attorney General in 1924, that "[i]t is not lightly to be assumed that Congress intended to tax the ward for the benefit of the guardian." 34 Op. Atty. Gen. 275, 281 (1924), *quoted in Squire v. Capoeman, supra*, 351 U.S. at 8. It is also consistent with the following statement of the Supreme Court in *Squire v. Capoeman, supra*, 351 U.S. at 8-9 (footnote omitted):

> [I]t was said by Felix S. Cohen, an acknowledged expert in Indian law, that "It is clear that the exemption accorded tribal and restricted Indian lands extends to the income derived directly therefrom."

The majority fails to recognize that courts must interpret federal statutes and policies in a manner which does not thwart the intent of Congress. The majority's failure to exempt Anderson's income from federal taxation does exactly that. Because I feel that *Squire v. Capoeman* and federal policies and statutes dictate that Mr. Anderson's income be tax-exempt, I must dissent.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ORDER DENYING
PETITION FOR REHEARING

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

GEORGE ANDERSON,
Defendant-Appellee.

No. 78-1114
DC No. CV 75-1-HG
Order

Before: CHOY and FERGUSON, Circuit Judges, and BARTELS,* District Judge.

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has voted to grant rehearing en banc. F.R.App.P 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected

*The Honorable John R. Bartels, Senior United States District Judge for the Eastern District of New York, sitting by designation.

APPENDIX B

MEMORANDUM AND ORDER

UNITED STATES OF AMERICA,

Plaintiff

v.

GEORGE ANDERSON,

Defendant

CV-75-HG
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HAVRE-GLASGOW DIVISION
October 7, 1977

On January 6, 1975, the United States filed this suit praying that the defendant be adjudged delinquent in his income taxes in the amount of $139,999.87,[1] including

1. The annual assessments claimed are as follows:

Year	Amount of Income Tax Assessed	Amount of Penalties Assessed*	Amount of Interest Assessed	Outstanding Balance**
1960	$10,525.31	$2,734.42	$4,886.63	$17,457.46
1961	7,879.77	2,046.58	3,185.58	13,195.95
1962	12,694.99	3,298.44	4,370.55	20,527.71
1963	9,849.67	2,556.32	2,800.00	15,317.73
1964	2,030.75	525.41	455.44	3,130.30
1965	21,476.11	5,581.20	3,527.96	31,460.26
1966	27,742.16	7,208.90	2,892.78	38,910.46
			TOTAL	$139,999.87

* Includes penalties assessed under Sections 6651 and 6654, Internal Revenue Code of 1954.

**Includes accrued interest to March 10, 1972.

The defendant's liability as of June 30, 1975, was $163,713.31, with interest accruing at the rate of $25.56 per day.

penalty and interest, and that certain tax liens filed against the defendant's property be declared valid. The Government also asked that this Court foreclose upon said liens, and that judgment be granted to the Government for any deficiency. The defendant has moved for summary judgment on the ground that the taxes in question were assessed on income which was derived from ranching activities conducted exclusively on Indian lands, and which was thus exempt from tax. This Court has jurisdiction under 28 U.S.C. §§ 1340, 1345

The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation moved to intervene as a party defendant under Federal Rules of Civil Procedure, Rule 24. This motion was denied by Memorandum and Order dated February 13, 1976.

The defendant is a non-competent[2] Sioux Indian enrolled as a member of the Fort Peck Tribes. He derives his income from the raising of cattle. He is beneficial owner as allottee of a tract composed of 316.24 acres of restricted trust land. In addition, the defendant is grantee by deed of the beneficial ownership of some 320.4 acres of land originally allotted to another Indian. The Government concedes exemption as to the income from these tracts.

The defendant is the holder of a grazing permit allowing him to graze cattle on Range Unit No. 122, which is composed of 4,160 acres of land beneficially owned by some 17 different Indian allottees, and of 640 acres beneficially owned by the Tribe. All of this land is held in trust by the United States for the use and benefit of the allottees or the Tribe

2. The term "non-competent" denotes an inability to alienate trust lands without the consent of the Government. It has nothing to do with mental capacity. See, *Stevens v. Commissioner*, 452 F.2d 741, 742 (9th Cir. 1971).

Pursuant to an order of this Court, the parties have submitted a memorandum of the status of this case. They agree that should this motion for summary judgment be granted, no further action of the Court would be required, barring a successful appeal and remand. However, if this motion is denied, the parties agree that discovery and trial will be necessary to determine the extent of the defendant's tax liability.

The question for decision here is whether the income of a non-competent Indian, derived solely from the grazing of cattle on a range unit composed of individually allotted and communally held tribal lands, is subject to the federal income tax. Counsel for the respective parties have cited no cases in this jurisdiction, and the Court's research has revealed none, in which this precise question has been decided.[3] The Court therefore treats the case as one of first impression.

In considering the question raised here, an understanding of the historical basis of present federal Indian land use policies is helpful. Such understanding must begin with the Allotment Act of 1887, 24 Stat. 388,

3. The Government offers the recent Ninth Circuit case of *Fry v. United States*, 557 F.2d 646 (9th Cir. 1977), as being "directly on point." The Court finds the case to be distinguishable. In *Fry*, the taxpayer was hired as a subcontractor to conduct logging operations on the reservation for a non-Indian logging company. The Court of Appeals found that the income there in question was not derived directly from tribal or allotted lands, but was income earned from a contract with a non-Indian logging company. In the case at bar, it cannot be seriously disputed that the income here in question was derived directly from Indian lands held in trust by the United States, and not through a contract with a middleman.

The Court also finds the cases of *Choteau v. Burnet*, 283 U.S. 691 (1931), and *Superintendent of Five Civilized Tribes vs. Commissioner*, 295 U.S. 418 (1935), to be distinguishable from the case at bar on the grounds stated by the Supreme Court in *Squire v. Capoeman*, 351 U.S. 1, 9-10 (1956).

codified at 25 U.S.C. § 331, *et seq.* This Act was passed pursuant to the commonly held opinion at the time that the main obstacle to solution of the "Indian problem" was the Indian tradition of communal ownership of realty. See M. PRICE, LAW AND THE AMERICAN INDIAN, 531-541 (1973). Reservation lands were parceled out to each enrolled tribal member, who was to be supplied by the Government with the physical and intellectual wherewithal to cultivate the land. Title to the land was to be held by the United States as trustee for the allottee for a period of time sufficient to allow him to become accustomed to the white man's ways, after which time the allottee would become owner of the fee. The Act also provided a means by which unallotted reservation land could be acquired by the United States, which would in turn make it available to non-Indian homesteaders. 25 U.S.C. § 348.

The results of this policy of partition and distribution were disastrous. One particular problem was raised by the provisions of § 348 regarding descent and distribution. Allotted lands were specifically made subject to the laws of intestate succession of the state or territory in which the land was located. As a result, after two or three generations of subdivision through heirship, the descendants of the original allottee were left with individual parcels of land which were simply too small to cultivate or graze effectively. See M. PRICE, LAW AND THE AMERICAN INDIAN, 646-649 (1973),and authorities cited therein.

In 1934, the Indian Reorganization Act, 48 Stat. 984, 25 U.S.C. §§ 461, *et. seq.*, was passed to remedy this problem. It terminated the allotment policy, 25 U.S.C. § 461, and provided a means by which the reservations could rebuild their land bases through purchase of contiguous lands with federal funds. 25 U.S.C. § 465. It further provided that tribes could, through adoption of a constitution and by-laws, establish themselves as corpo-

rate political entities. 25 U.S.C. § 476. Most important for purposes of this case, the Reorganization Act authorized the Secretary of the Interior to promulgate rules and regulations to promote optimum use of Indian land resources. 25 U.S.C. § 466.

The regulations, codified at 25 C.F.R. §§ 151.1, *et. seq.*, provide for consolidation of the allotments of certain allottees into grazing units such as the one utilized by the defendant in the case at bar. The objectives of these regulations are significant:

> It is the purpose of the regulations in this part to:
> ....
>
> (b) Promote use of the range resource by Indians to enable them to earn a living, in whole or in part, through the grazing of their own livestock.
>
> (c) Provide for administration of grazing privileges in a manner which will yield the highest return consistent with sustained yield management principles and the fulfilling of the rights and objectives of tribal governing bodies and individual land owners.

25 C.F.R. § 151.3.

The question before the Court must be considered against this statutory and regulatory backdrop, for Courts have consistently recognized that the question of Indian taxation does not begin and end with the language of the taxing statute. *Squire v. Capoeman*, 351 U.S. 1, 6 (1956); See *Choteau v. Burnet*, 283 U.S. 691, 696 (1931). Rather, consideration of relevant treaties, statutes, and other expressions of federal policy are required.

In *Squire*, the Supreme Court handed down its most significant decision on the federal tax status of Indian allottees. The question before the Court was whether a non-competent Indian could be taxed on income derived from the sale of timber grown on his allotted land. The Court recognized the broad general applicability of tax

statutes, and the general rule that exemptions from such statutes must be clearly expressed, but stated "[w] cannot agree that taxability of respondents is unaffected by the treaty, the trust patent or the Allotment Act." 351 U.S. at 1. After an examination of this relevant background, the Court concluded that the income in question was tax-exempt, based on the guarantee in 25 U.S.C. § 348 that allotted land would eventually be conveyed to the allottee or his heirs "in fee . . . free of all charge or incumbrance whatsoever . . . ."[4]

The Court does not find this case to be within the specific holding of *Squire;* the cases are clearly distinguishable on grounds that the defendant here is not an allottee of the land of which the grazing unit is composed. However, the Court is convinced that a full effectuation of federal Indian land use policies requires that income derived from grazing units be free from tax.

The inefficient use of Indian lands under the Allotment Act was one of the major concerns of Congress in enacting subsequent legislation. This concern is reflected in the heavy emphasis on land use in the Reorganization Act and in the regulations promulgated thereunder by the Secretary of the Interior. It is clear that the federal government, specifically the Congress and the Department of the Interior, are most concerned about promoting optimum Indian land use and eventual economic independence.

In *Squire,* the Supreme Court recognized that income tax laws ought not to be construed so as to impede the accomplishment of federal objectives in the area of Indian

4. The Court found that Congress in all probability intended such income to be tax exempt, and that in any event that result was required by the guarantee against conveyance of incumbered land. In reaching this conclusion, the Court relied on the principle, first enunciated in *Worcester v. Georgia,* 6 Pet. (31 U.S.) 515 (1832), that treaties and statutes dealing with Indians are to be construed most strongly in favor of the Indians. 351 U.S. at 6-7.

land use. 351 U.S. at 10. The concerns expressed in that case, that the proceeds of the sale of timber from allotted lands must of necessity be tax exempt if the allottee is to achieve economic independence, are equally applicable in the case at bar. In many cases, individual allotments of land are simply too small to be grazed efficiently. In addition, the individual allottees whose land may comprise a grazing unit are generally unable to work the land.[5] If efficient use is to be made of grazing land, which may be arid and ill-suited for cultivation, it is clear that Indian ranchers must have easy access to grazing units.

As the Court noted in *Squire*, "[i]t is unreasonable to infer that, in enacting the income tax law, Congress intended to limit or undermine the government's undertaking." 351 U.S. at 10. The Court will not draw such an inference in this case. The taxation of income from grazing permits impedes the achievement of the Government's land use objectives. The Court therefore concludes that such income is tax exempt.

In reaching this conclusion, the Court is not unmindful of the fact that it has contravened such precedent as there is from other jurisdictions. See *Holt v. Commissioner*, 364 F. 2d 38 (8th Cir. 1966); *Bryan L. Stevens*, 52 T.C.

5. 10 C.F.R. § 151.9 describes the types of allottees whose land may be included in a grazing unit:

(a) The Superintendent may include individually owned land in grazing permits on behalf of: (1) Orphaned minors; (2) persons who are non compos mentis and without legal guardians; (3) undetermined heirs or devisees of a deceased Indian owner; (4) adults whose whereabouts are unknown; (5)heirs or devisees, none of whom are using the land and who have been unable to agree upon the permitting of their land . . . ; (6) those Indian land owners . . . who give the Superintendent written authority to grant grazing privileges; and (7) any other Indian minor or person who is non compos mentis or otherwise under legal disability, if that person's guardian . . . gives the Superintendent written authority to grant grazing privileges.

330 (1969), aff'd on other grounds *sub nom. Stevens v. Commissioner*, 452 F.2d 741 (9th Cir. 1971).[6] However, these cases ignore the large issues of policy which mandate the Court's decision in the case at bar. If the United States is to live up to its guardianship status, as it attempts to with its land use policies, the conclusion reached by the Court is a necessary one. Therefore,

IT IS ORDERED that the defendant's motion for summary judgment be, and the same hereby is, granted.

IT IS FURTHER ORDERED that the plaintiff remove or release any lien, levy, or other incumbrance against the defendant or his property as a result of any claimed tax on income derived by the defendant from a grazing permit on tribal and/or allotted lands.

The Clerk is directed to enter a final judgment, by separate document, consistent with this Memorandum and Order.

The Clerk is further directed to notify the parties of the entry of this order.

Done and dated this 7th day of October, 1977.

James F. Battin
United States District Judge

6. In *Stevens*, the Ninth Circuit considered the taxability of income derived from lands originally allotted to another Indian and acquired by the taxpayer through descent or conveyance. The Court found the holding in *Squire* to be neither narrow nor technical, 452 F.2d at 744, and concluded that allotted land is subject to tax only after a patent in fee is issued. The issue of income from activities on grazing units was decided adversely to the taxpayer by the Tax Court; this determination was not appealed. 452 F.2d at 743.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HAVRE-GLASGOW DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

GEORGE ANDERSON,
Defendant.

JUDGMENT

This action came on for (hearing) before the Court, Honorable *James F. Battin*, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the defendant's motion for summary judgment is granted. IT IS FURTHER ORDERED that the plaintiff remove or release any lien, levy, or other incumbrance against the defendant or his property as a result of any claimed tax on income derived by the defendant from a grazing permit on tribal and/or allotted lands

Dated at Billings, Montana , this 7th day of October, 1977.

JOHN E. PEDERSON
Clerk of Court

By _____
Deputy Clerk

APPENDIX C

General Allotment Act of Feb. 8, 1887, 24 Stat. 388

CHAP. 119.—An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

To each head of a family, one-quarter of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: *Provided,* That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided,

the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *And provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: *And provided further*, That when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

SEC. 2. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That is any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

SEC. 3. That the allotments provided for in this act shall be made by special agents appointed by the

President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time Prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

SEC. 4. That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

SEC. 5. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and

declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in the case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided*, That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided; and the laws of the State of Kansas regulating the descent and partition of real estate shall, so far as practicable, apply to all lands in the Indian Territory which may be allotted in severalty under the provisions of this act: *And, provided further*, That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until

ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: *Provided however*, That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further*, That its patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years occupancy thereof as such homestead; and any conveyance of such lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at three per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto. And if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained

shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And hereafter in the employment of Indian police, or any other employes in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

SEC. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

Amended By
25 U.S.C. 349, May 8, 1906
Text

At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this act [25 USCS § 348], then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law: Provided, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: Provided further, That until issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States: And provided further, That the provisions of this act shall not extend to any Indians in the Indian Territory.
(Feb. 8, 1887, c. 119 § 6, 24 Stat. 390; May 8, 1906, c. 2348, 34 Stat. 182).

SEC. 7. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the

damage of any other riparian proprietor.

SEC. 8. That the provision of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by executive order.

SEC. 9. That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be proportionately repaid out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

SEC. 10. That nothing in this act contained shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

SEC. 11. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in Southwestern Colorado to a new reservation by and with the consent of a majority of the adult members of said tribe.

Approved, February 8, 1887.

Appendix D
Allotment Act for Fort Peck Indian Reservation of Montana, Act of May 30, 1908, 35 Stat. 558.

Chap. 237. An act for the survey and allotment of lands now embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and the sale and disposal of all the surplus lands after allotment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be surveyed all the lands embraced within the limits of the Fort Peck Indian Reservation, in the State of Montana, and to cause an examination of the lands within such reservation to be made by the Reclamation Service and by experts of the Geological Survey, and if there be found any lands which it may be deemed practicable to bring under an irrigation project, or any lands bearing lignite coal, the Secretary of the Interior is hereby authorized to construct such irrigation projects and reserve such lands as may be irrigable therefrom, or necessary for irrigation works, and also coal lands as may be necessary to the construction and maintenance of any such projects.

Sec. 2. That as soon as all the lands embraced within the said Fort Peck Indian Reservation shall have been surveyed the Commissioner of Indian Affairs shall cause allotments of the same to be made under the provisions of the allotment laws of the United States to all Indians belonging and having tribal rights on said reservation; and there shall be allotted to each such Indian three hundred and twenty acres of grazing land, and there shall also be made an additional allotment of not less than two and one-half acres nor more than twenty acres of timberland

to heads of families and single adult members of the tribe over eighteen years of age: *Provided,* That should it be determined as feasible, after examination, to irrigate any of said lands, the irrigable land shall be allotted in equal proportions to such only of the members of said tribe as shall be living at the day of the beginning of the work of allotment on said reservation by the special allotting agent, and such allotment of irrigable land shall be in addition to the allotments of grazing and timber lands aforesaid, but no member shall receive more than forty acres of such irrigable land; and to pay the costs of examination provided for herein and for the construction of irrigation systems to irrigate lands which may be found susceptible of irrigation, there is hereby appropriated two hundred thousand dollars, to be immediately available, the said sum and any and all additional sums hereafter appropriated to pay the cost of such examination and irrigation systems to be reimbursed from proceeds of sales of lands within the said reservation: *Provided, however,* That any land irrigable by any system constructed under the provisions of this act may be disposed of subject to the following conditions: The entryman or owner shall, in addition to the payments required by section eight of this act, be required to pay for a water right the proportionate cost of the construction of said system in not more than fifteen annual installments, as fixed by the Secretary of the Interior, with a view to the return of all moneys expended thereon, the same to paid at the local land office, and the register and receiver shall be allowed the usual commissions on all moneys paid.

The entryman of lands to be irrigated by said system shall, in addition to compliance with the homestead laws, reclaim at least one-half of the total irrigable area of his entry for agricultural purposes, and before receiving patent for the lands covered by his entry shall pay the charges apportioned against such tract, nor shall any such lands be subject to mineral entry or location. No right to the use of

water shall be disposed of for a tract exceeding one hundred and sixty acres to any one person, and the Secretary of the Interior may limit the areas to be entered at not less than forty nor more than one hundred and sixty acres each.

A failure to make any two payments when due shall render the entry and water-right application subject to cancellation, with the forfeiture of all rights under this act, as well as of any moneys paid thereon. The funds arising hereunder shall be paid into the Treasury of the United States and be added to the proceeds derived from the sale of the lands. No right to the use of water for lands in private ownership shall be sold to any landowner unless he be an actual bona fide resident on such land or occupant thereof residing in the neighborhood of such land, and no such right shall permanently attach until all payments therefor are made.

All applicants for water rights under the systems constructed in pursuance of this act shall be required to pay such annual charges for operation and maintenance as shall be fixed by the Secretary of the Interior, and the failure to pay such charges when due shall render the water-right application and the entry subject to cancellation, with the forfeiture of all rights under this act as well as of any moneys already paid thereon.

The Secretary of the Interior is hereby authorized to fix the time for the beginning of such payments and to provide such rules and regulations in regard thereto as he may deem proper. Upon the cancellation of any entry or water-right application, as herein provided, such lands or water rights may be disposed of under the terms of this act and at such price and on such conditions as the Secretary of the Interior may determine, but not less nor more than the cost as originally fixed.

In every case in which a forfeiture is enforced and the land and rights of an entryman are made the subject of resale then, after the payment of the balance due from the

entryman and the cost and charges, if any attendant on the forfeiture and resale, any surplus remainng out of the proceeds of such sale shall be refunded to said entryman or his heirs.

The land irrigable under the systems herein provided, which has been allotted to Indians in severalty, shall be deemed to have a right to so much water as may be required to irrigate such land without cost to the Indians for the construction of such irrigation systems. The purchaser of any Indian allotment purchased prior to the expiration of the trust period thereon shall be exempt from any and all charge for construction of the irrigation system incurred up to the time of such purchase. All lands allotted to Indians shall bear their pro rata share of the cost of operation and maintenance of the irrigation system under which they lie; and the Secretary of the Interior may withhold from any Indian a sufficient amount of his pro rata share of any moneys subject to distribution to pay any charge assessed against land held in trust for him for operation and maintenance of the irrigation system.

When the payments required by this act have been made for the major part of the unallotted lands irrigable under any system, and subject to charges for construction thereof, the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense, under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior.

All appropriations of the waters of the reservation shall be made under the provisions of the laws of the State of Montana.

SEC. 3. That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as long as needed, and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians: *Provided, however,* That the Secretary of the Interior

is hereby authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other proper authority of any religious organization heretofore engaged in mission or school work on said reservation, for such lands thereon (not included in any town site herein provided for) as have been heretofore set apart to such organization for mission or school purposes: *And provided further,* That the Secretary of the Interior is hereby authorized and directed to reserve two and seven hundredths acres of land in the town of Poplar, on said reservation, now occupied for public school purposes, and issue patent in fee for the same to the school trustees of the school district in which said land is situated.

The Secretary of the Interior is hereby authorized and directed, when the said lands are surveyed, to issue to Great Northern Railway Company a patent or patents conveying for railroad purposes such lands at such point or points as in the judgment of the said Secretary are necessary for the use of said railway company in the construction and maintenance of water reservoirs, dam sites, and for right of way for water pipe lines for use by said railway company in operating its line of railroad over and across said reservation; the said lands so to be conveyed not to exceed forty acres at any one point and not to exceed one tract for each ten miles of the main line of said railway as now constructed within said reservation, and said lands shall be selected in such manner as not to unnecessarily injure or interfere with the selection and location of town sites hereinafter provided for; the said patent or patents to be delivered to said company upon payment by said company, within thirty days after notification of the issuance of patent, or the reasonable value of said lands, not less than two dollars and fifty cents per acre, and also upon payment by said company to said Secretary of any and all damages sustained by individual members of said tribe by reason of the appropriation of said lands for the purposes aforesaid; all moneys so paid

for the value of said lands to be deposited in the Treasury of the United States to the credit of said Indians, and the moneys received by said Secretary as damages sustained by individual members of said tribe shall be by him paid to the individuals sustaining said damages.

SEC. 4. That upon the completion of said allotments the President of the United States shall appoint a commission consisting of three persons to inspect, classify, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians or reserved by the Secretary of the Interior, said commission to be constituted as follows: One of said commissioners shall be a person holdin tribal relations with said Indians, one a representative of the Indian Bureau, and one a resident citizen of the State of Montana.

SEC. 5. That within thirty days after their appointment said commissioners shall meet at some point within the Fort Peck Reservation and organize by election of one of their number as chairman. Said commission is hereby empowered to select, subject to the approval of the Secretary of the Interior, such clerks and assistants as may be necessary in the performance of their duties herein specified, the compensation of each such clerk and assistant to be fixed by said Secretary. In no case shall any such clerk or assistant receive a salary exceeding six dollars per day. In addition to the compensation of said clerks and assistants and in addition to the salaries hereinafter provided for the said commissioners, they shall receive their actual necessary expenses incurred during such time only as they shall be engaged in the performance of their respective duties on said reservation.

SEC. 6. That said commissioners shall then proceed to personally inspect and classify and appraise by the smallest legal subdivisions of forty acres each of all the remaining lands embraced with said reservation. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land; second,

grazing land; third, arid land; fourth, mineral land, the mineral land not to be appraised; that said commissioners shall be paid a salary of not to exceed ten dollars per day each while actually employed in the inspection and classification of said lands, such inspection and classification to be completed within nine months from the date of the organization of said commission.

SEC. 7. That when said commission shall have completed the classification and appraisement of said lands and the same shall have been approved by the Secretary of the Interior the lands shall be disposed of under the general provisions of the homestead, desert-land, mineral, and town-site laws of the United States, except sections sixteen and thirty-six of each township, or any part thereof, for which the State of Montana has not heretofore received indemnity lands under existing laws, which sections, or parts thereof, are hereby granted to the State of Montana for school purposes. And in case either of said sections, or parts thereof, is lost to the State by reason of allotment thereof to any Indian or Indians, or by reservation or withdrawal under the provisions of this act or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized to select other unoccupied, unreserved, nonmineral lands within said reservation, not exceeding two sections in any one township, which selections must be made within the sixty days immediately prior to the date fixed by the President's proclamation opening the surplus lands to settlement: *Provided*, That the United States shall pay to the said Indians for the lands in said sections sixteen and thirty-six, so granted, or the lands within said reservation selected in lieu thereof, the sum of one dollar and twenty-five cents per acre.

SEC. 8. That the lands so classified and appraised as provided shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when and the manner in which these lands

may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy or enter any of said lands except as prescribed in such proclamation, until after the expiration of sixty days from the time when the same are opened to settlement and entry: *Provided,* That the rights of honorably discharged Union soldiers and sailors of the late Civil and Spanish Wars and the Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statues, as amended by the act of March first, nineteen hundred and one, shall not be abridged, but no entry shall be allowed under section twenty-three hundred and six of the Revised Statutes: *Provided further,* That the price of said lands shall be appriased value thereof, as fixed by said commission, which in no case shall be less than one dollar and twenty-five cents per acre for agricultural, grazing, and arid land, and shall be paid as follows: Upon all lands entered or filed upon under the provisions of the homestead law, there shall be paid one-fifth of the appraised value of the land when entry of filing is made, and the remainder shall be paid in five equal annual installments in one, two, three, four, and five years, respectively, from and after date of entry or filing, and when an entryman shall have complied with all the requirements of the homestead law and shall have submitted final proof within seven years from date of entry and shall have made all required payments aforesaid, he shall be entitled to a patent for the lands entered: *Provided,* That aliens who have declared their intentions to become citizens of the United States may become such entrymen, but no patent shall be issued to any person who is not a citizen of the United States at the time of making final proof: *And provided further,* That the fees and commissions at the time of commutation or final entry shall be the same as are now provided by law where the price of land is one dollar and twenty-five cents per acre: *Provided,* That no-

thing in this act shall prevent a citizen of the United States from commuting his homestead entry under the provisions of section two thousand three hundred and one of the Revised Statues by paying for the land entered the price fixed by said commission, receiving credits for payments previously made.

SEC. 9. That entrymen under the desert-land law shall be required to pay one-fifth the remainder in five equal annual installments, as provided in homestead entries; but any such entryman shall be required to pay the full appraised value of the land on or before submission of final proof: *Provided,* That if any person taking any oath required by the homestead or desert-land laws or the regulations thereunder, shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury and shall forfeit the money which he may have paid for said land and all right and title to the same, and if any person making homestead or desert-land entry shall fail to comply with the law and regulations under which his entry is made, or shall fail to make final proof within the time prescribed by law, or shall fail to make all payments or any of them required herein, he shall forfeit all money which he may have paid on the land and all right and title to the same, and the entry shall be canceled.

SEC. 10. That if, after the approval of the classification and appraisement, as provided herein, there shall be found lands within the limits of the reservation deemed practicable for irrigation projects deemed practicable under the provisions of the act of Congress approved June seventeenth, nineteen hundred and two, known as the reclamation act, said lands shall be subject to withdrawal and be disposed of under the provisions of said act, and settlers shall pay, in addition to the cost of construction and maintenance provided therein, the appraised value as provided in this act, to the proper officers, to be covered into the Treasury of the United States to the credit of the Indians.

SEC. 11. That all lands hereby opened to settlement

remaining undisposed of at the end of five years from the date of President's proclamation to entry shall be sold to the highest bidder for cash at not less than one dollar and twenty-five cents per acre, under regulations to be prescribed by the Secretary of the Interior; and any lands remaining unsold ten years after said lands shall have been opened to entry shall be sold to the highest bidder for cash, without regard to the minimum limit above stated: *Provided*, That not more than six hundred and forty acres shall be sold to any one person or company.

SEC. 12. That the lands within said reservation however classified, shall, on and after sixty days from the date fixed by the President's proclamation opening said lands, be subject to exploration, location, and purchase under the general provisions of the United States mineral and coal land laws at not less than the price therein fixed and not less than the appraised value of the land, except that no mineral or coal exploration, location, or purchase shall be permitted upon any lands allotted to Indians or withdrawn under the provisions of this act.

SEC. 13. That nothing in this act contained shall in any manner bind the United States to purchase any part of the land herein described, except sections sixteen and thirty-six, or the equivalent in each township, that may be granted to the State of Montana, the reserved tracts hereinbefore mentioned for agency and school purposes, or to dispose of lands except as provided herein, or to guarantee to find purchasers for said lands, or any part thereof, it being the intention of this act that the United States shall act as trustee for said Indians to dispose of said lands and to expend and pay over the proceeds received from the sale thereof only as received.

SEC. 14. That the Secretary of the Interior is hereby authorized and directed to reserve and set aside for townsite purposes, and to survey, lay out, and plat into town lots, streets, alleys, and parks, not less than forty acres of said land at the present settlement of Poplar, and at such

other places as the Secretary of the Interior may deem necessary or convenient for town sites, in such manner as will best subserve, the present needs and the reasonable prospective growth of said settlement. That such town sites shall be surveyed, appraised, and disposed of as provided in section twenty-three hundred and eighty-one of the United States Revised Statutes: *Provided,* That any person who, at the date when the appraisers commence their work upon the land, shall be an actual resident upon any one such lot and the owner of substantial and permanent improvements thereon, and who shall maintain his or her residence and improvements on such lot to the date of his or her application to enter, shall be entitled to enter, at any time prior to the day fixed for the public sale and at the appraised value thereof, such lot and any four additional lots of which he or she may also be in possession and upon which he or she may have substantial and permanent improvements: *Provided further,* That before making entry of any such lot or lots the applicant shall make proof, to the satisfaction of the register and receiver of the land district in which the land lies, of such residence, possession, and ownership of improvements, under such regulations as to time, notice, manner, and character of proofs as may be prescribed by the Commissioner of the General Land Office, with the approval of the Secretary of the Interior: *Provided further,* That in making their appraisal of the lots so surveyed, it shall be the duty of the appraisers to ascertain the names of the residents upon and occupants of any such lots, the character and extent of the improvements thereon, and the name of the reputed owner thereof, and to report their findings in connection with their report of the appraisal, which report of findings shall be taken as prima facie evidence of the facts therein set out. All such lots not so entered prior to the day fixed for public sale shall be offered at public outcry, in their regular order, with the other unimproved and unoccupied lots. That no lot shall be sold for less than ten dollars: *And provided further,*

That said lots, when surveyed, shall approximate fifty by one hundred and fifty feet in size.

SEC. 15. That after deducting the expenses of the commission of classification, appraisement, and the sale of the lands, and such other incidental expenses as may necessarily be incurred, including the cost of survey of said lands, the balance realized from the proceeds of the sale of the lands in conformity with the provisions of this act shall be paid into the Treasury of the United States and placed to the credit of said Indian tribe, to draw four per centum per annum, the principal and interest to be expended from time to time by the Secretary of the Interior as he may deem advisable for the benefit of said Indians in their education and civilization, the construction and maintenance of irrigation ditches, should such be determined as feasible and beneficial to said allottes, and suitable per capita cash payments. The remainder of all funds deposited in the Treasury, realized from such sale of lands herein authorized, together with the remainder of all other funds now placed to the credit of or that shall hereafter become due to said tribe of Indians, shall, within three years after the completion of the irrigation systems to be constructed under the provisions of section two hereof, be allotted in severalty to the members of the tribe, the persons entitled to share as members in such distribution to be determined by the Secretary of the Interior.

SEC. 16. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated in addition to the amount appropriated in section two, the sum of one hundred thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the State of Montana, and for lands reserved for agency and school purposes, at the rate of one dollar and twenty-five cents per acre; also the sum of one hundred thousand dollars, or so much thereof as may be necessary, to be immediately available, to enable the Secretary of the Interior to survey, allot, classify, and appraise the lands in said

reservation as provided herein; and also to defray the expense of the appraisement and survey of town sites, the latter sums to be reimbursable out of the funds arising from the sale of said lands.

Approved, May 30, 1908.

APPENDIX E
Indian Reorganization Act of June 18, 1934, 48 Stat. 984

CHAP. 576. — An Act To conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

SEC. 2. The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are hereby extended and continued until otherwise directed by Congress.

SEC. 3. The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however,* That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act: *Provided further,* That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation: *Provided further,* That the order of the Department of the Interior signed, dated, and ap-

proved by Honorable Ray Lyman Wilbur, as Secretary of the Interior, on October 28, 1932, temporarily withdrawing lands of the papago Indian Reservation in Arizona from all forms of mineral entry of claim under the public land mining laws, is hereby revoked and rescinded, and the lands of the said Papago Indian Reservation are hereby restored to exploration and location, under the existing mining laws of the United States, in accordance with the express terms and provisions declared and set forth in the Executive orders establishing said Papago Indian Reservation: *Provided further,* That damages shall be paid to the Papago Tribe for loss of any improvements on any land located for mining in such a sum as may be determined by the Secretary of the Interior but not to exceed the cost of said improvements: *Provided further,* That a yearly rental not to exceed five cents per acre shall be paid to the Papago Tribe for loss of the use or occupancy of any land withdrawn by the requirements of mining operations, and payments derived from damages or rentals shall be deposited in the Treasury of the United States to the credit of the Papago Tribe: *Provided further,* That in the event any person or persons, partnership, corporation, or association, desires a mineral patent, according to the mining laws of the United States, he or they shall first deposit in the Treasury of the United States to the credit of the Papago Tribe the sum of $1.00 per acre in lieu of annual rental, as hereinbefore provided, to compensate for the loss or occupancy of the lands withdrawn by the requirements of mining operations: *Provided further,* That patentee shall also pay into the Treausry of the United States to the credit of the Papago Tribe damages for the loss of improvements not heretofore paid in such a sum as may be determined by the Secretary of the Interior, but not to exceed the cost thereof; the payment of $1.00 per acre for surface use to be refunded to patentee in the event that patent is not acquired.

Nothing herein contained shall restrict the granting or

use of permits for easements or rights-of-way; or ingress or egress over the lands for all proper and lawful purposes; and nothing contained herein, except as expressly provided, shall be construed as authority for the Secretary of the Interior, or any other person, to issue or promulgate a rule or regulation in conflict with the Executive order of February 1, 1917, creating the Papago Indian Reservation in Arizona or the Act of February 21, 1931 (46 Stat. 1202).

SEC. 4. Except as herein provided, no sale, devise, gift, exchange or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized hereunder, shall be made or approved: *Provided, however,* That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived or to a successor corporation; and in all instances such lands or interests shall descend or be devised, in accordance with the then existing laws of the State, or Federal laws where applicable, in which said lands are located or in which the subject matter of the corporation is located, to any member of such tribe or of such corporation or any heirs of such member: *Provided further,* That the Secretary of the Interior may authorize voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in his judgement, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations.

SEC. 5. The Secretary of the Interior is hereby authorizd, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, incuding trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands,

water rights, and surface rights, and for expenses incident to such acquisition, there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided,* That no part of such funds shall be used to acquire additional land outside the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona and New Mexico, in the event that the proposed Navajo boundary extension measures now pending in Congress and embodied in the bills (S.2499 and H. R. 8927) to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes, and the bills (S. 2531 and H. R. 8982) to define the exterior boundaries of the Navajo Indian Reservation in New Mexico and for other purposes, or similiar legislation, become law.

The unexpented balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

SEC. 6. The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian forestry units on the principal of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes.

SEC. 7. The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: *Provided,* That

lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

SEC. 8. Nothing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter.

SEC. 9. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, but not to exceed $250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under this Act.

SEC. 10. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $10,000,000 to be established as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established. A report shall be made annually to Congress of transactions under this authorization.

SEC. 11 There is hereby authorized to be appropriated, out of any funds in the Untied States Treasury not otherwise appropriated, a sum not to exceed $250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this seciton, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: *Provided,* That not more than $50,000 of such sum shall be available for loans

to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs.

SEC. 12. The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

SEC. 13. The provisions of this Act shall not appy to any of the Territories, colonies, or insular possessions of the United States, except that sections 9, 10, 11, 12, and 16, shall apply to the Territory of Alaska: *Provided,* That Sections 2, 4, 7, 16, 17, and 18 of this Act shall not apply to the following-named Indian tribes, the members of such Indian tribes, together with members of other tribes affiliated wich such named tribes located in the State of Oklahoma, as follows: Cheyenne, Arapaho, Apache, Comanche, Kiowa, Caddo, Delaware, Wichita, Osage, Kaw, Otoe, Tonkawa, Pawnee, Ponca, Shawnee, Ottawa, Quapaw, Seneca, Wyandotte, Iowa, Sac and Fox, Kickapoo, Pottawantomi, Cherokee, Chickasaw, Choctaw, Creek, and Seminole. Section 4 of this Act shall not apply to the Indians of the Klamath Reservation in Oregon.

SEC. 14. The Secretary of the Interior is hereby directed to continue the allowance of the articles enumerated in section 17 of the Act of March 2, 1889 (23 Stat. L. 894), or their commuted cash value under the Act of June 10, 1896 (29 Stat. L. 334), to all Sioux Indians who would be eligible, but for the provisions of this Act, to receive allotments of lands in severalty under section 19 of the Act of May 29, 1908 (25 (35) Stat.L. 451), or under any prior Act, and who have the prescribed status of the head of a family or single

person over the age of eighteen years, and his approval shall be final and conclusive, claims therefor to be paid as formerly from the permanent appropriation made by said section 17 and carried on the books of the Treasury for this purpose. No person shall receive in his own right more than one allowance of the benefits, and application must be made and approved during the lifetime of the allottee or the right shall lapse. Such benefits shall continue to be paid upon such reservation until such time as the lands available therein for allotment at the time of the passage of this Act would have been exhausted by the award to each person receiving such benefits of an allotment of eighty acres of such land.

SEC. 15. Nothing in this Act shall be construed to impair of prejudice any claim or suit of any Indian tribe against the United States. It is hereby declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations authorized by this Act shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

SEC. 16. Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and rgulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by

said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal counsel of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.

SEC. 17. The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: *Provided,* That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

SEC. 18. This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after the passage and approval of this Act, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

SEC. 19. The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

Approved, June 18, 1934.

APPENDIX F

General Grazing Regulations for Indian Reservations, 25 C.F.R. § 151.1 through § 151.7

§ 151.1 Definitions

(a) "Tribe" means a tribe, band, community, group, or pueblo of Indians.

(b) "Governing - body" means the general council or the tribal committee, board, or other membership body recognized by the Secretary as having the authority to act for the tribe, band, community, pueblo, or group of Indians.

(c) "Secretary" means the Secretary of the Interior.

(d) "Commissioner" means the Commissioner of Indian Affairs.

(e) "Area Director" means the Director of any established Area of the Bureau of Indian Affairs.

(f) "Superintendent" means the Superintendent of any Agency of the Bureau of Indian Affairs.

(g) "Individually owned land" means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(h) "Tribal land" means land or any interest therein held by the United States in trust for a tribe, band, community, group, or pueblo of Indians subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(i) "Government land" means land, other than tribal land, acquired or reserved by the United States for Indian Bureau administrative purposes which is not immediately needed for the purposes for which it was acquired or

reserved and land transferred to or placed under the jurisdiction of the Bureau of Indian Affairs.

(j) "Range unit" means a tract of range land designated as a management unit for administration of grazing. A range unit may consist of tribal, individually owned or Government land or any combination thereof consolidated for grazing administration.

(k) "Permit" means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of land.

(l) "Adult tribal members," for the purposes of this part, means a member of an Indian tribe, band, community, pueblo, or group, who has attained the age of 21 years.

(m) "Immediate family" means the spouse, brothers, sisters, lineal ancestors, and descendants of an adult tribal member.

(n) "Allocation" means the apportionment of grazing privileges without competitive bidding including the determination of who may graze livestock, the number and kind of livestock, and the place such livestock will be grazed.

§151.2 General Authority.

It is within the authority of the Secretary to protect individually owned and tribal lands against waste and to prescribe rules and regulations under which these lands may be leased or permitted for grazing. Improper use which threatens destruction of the range and soil resource is properly considered waste. With respect to reservations upon which the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), is applicable, the action of the Secretary must follow the directions in section 6 of that Act which are: "The Secretary of the Interior is directed to make rules and regulations for the operation and maintenance of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated

carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes." It is also the Secretary's responsibility to improve the economic well being of the Indian people through proper and efficient resource use.

§151.3 Objectives.

It is the purpose of the regulations of this part to:

(a) Preserve, through proper grazing management, the land, water, forest, forage, wildlife, and recreational values on the reservations and improve and build up these resources where they have deteriorated.

(b) Promote use of the range resource by Indians to enable them to earn a living, in whole or in part, through the grazing of their own livestock.

(c) Provide for the administration of grazing privileges in a manner which will yield the highest return consistent with sustained yield land management principles and the fulfillment of the rights and objectives of tribal governing bodies and individual land owners.

§151.4 Regulations; scope; exceptions.

The grazing regulations of this part apply to individually owned, tribal, and Government lands under the jurisdiction of the Bureau of Indian Affairs, except as superseded by special written instructions from the Commissioner in particular instances, or by provisions of any tribal constitution, bylaws, or charter, heretofore duly ratified or approved, or by any tribal action authorized thereunder. All forms necessary to carry out the purpose of the regulations of this part shall be approved by the Commissioner. Grazing lands not in range units established under this part may be leased pursuant to Part 131 of this chapter.

§151.5 Establishment of range units.

The conservation, development, and effective utiliza-

tion of the range resource requires consolidation of small individual and tribal ownerships and the organization of the total range area into management units. This shall be done under the direction of the Superintendent, after consultation with the Indians, in a manner which will best meet the requirements of Indian needs, land ownership status, and proper land use. Any contiguous block of Indian and Government rangeland in excess of 2,560 acres shall be designated as one or more range units. Range units smaller than 2,560 acres may also be established under this procedure.

§151.6 Grazing capacity.

Subject to approval of the Area Director, the Superintendent shall prescribe the maximum number of livestock which may be grazed on each range unit and the season, or seasons, of use to achieve the objectives cited in §151.3. The grazing capacity so prescribed will take into consideration the implementation of tribal objectives and programs requiring grazeable land to support wildlife and other nonlivestock uses. Stocking rates shall be reviewed on a continuing basis and adjusted as conditions warrant.

§151.7 Grazing on range units authorized by permit.

All grazing use of range units shall be authorized by a grazing permit except Indian's use of their own land pursuant to §151.8. Permits on range units containing trust or restricted land which is entirely tribally owned, or is in combination with Government land, may be issued by the governing body, subject to approval by the Superintendent, or by the Superintendent pursuant to §151.9(b). The Superintendent shall issue all permits on range units containing trust or restricted land which is entirely individually owned or is in combination with tribal and or Government land.

No. 80-1051

In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE ANDERSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The question presented in this federal income tax case is whether income earned by an Indian from ranching activities conducted on leased tribal land and land allotted to other Indians is exempt from federal tax.

Petitioner is a Sioux Indian enrolled as a member of the Fort Peck Tribes. He holds a grazing permit allowing him to graze cattle on a range consisting of 4,160 acres of land beneficially owned by 17 individual Indian allottees (of which petitioner is not one) and 640 unallotted acres beneficially owned by the tribe (II-R. 223).[1] During 1960-1966, the taxable years at issue, petitioner realized income from his cattle grazing activities on the range but did not file any

[1] "I-R." and "II-R." refer to the two-volume duplicated record filed in the court of appeals.

returns for those years or pay any tax with respect to such income.[2] Consequently, the Internal Revenue Service assessed income taxes and penalties against petitioner and thereafter instituted this suit in the United States District Court for the District of Montana to reduce the assessments to judgment.

The district court granted summary judgment for petitioner (Pet. App. 18-25). It held that exemption from tax for income generated by petitioner's cattle grazing activities was required for "the achievement of the Government's land use objectives" for Indians and to insure that the United States would "live up to its guardianship status" (Pet. App. 24, 25). The court of appeals reversed (Pet. App. 1-16). Relying on *Holt* v. *Commissioner*, 364 F. 2d 38 (8th Cir. 1966), cert. denied, 386 U.S. 931 (1967), and *Stevens* v. *Commissioner*, 52 T.C. 330 (1969), aff'd and rev'd on other grounds, 452 F. 2d 741 (9th Cir. 1971), the court of appeals held that no statute or treaty exempted from tax the income petitioner earned from cattle grazing operations conducted on land not allotted to him. It stated that considerations of "policy can create no federal income tax exemption when unaccompanied by express exempting language in a statute or treaty" (Pet. App. 13).

1. The court of appeals correctly held that petitioner's income from cattle grazing activities conducted on trust land not allotted to him was subject to federal taxation.

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[2]Petitioner's headquarters are located on 316 acres of trust land specifically allotted to him. Petitioner is also the beneficial owner of another 320 acres originally allotted to another Indian but later conveyed to him by deed. The government conceded below that the income petitioner derived from ranching activities conducted on these two tracts was exempt from federal tax (II-R. 223; Pet. App. 3-4). See Rev. Rul. 56-342, 1956-2 Cum. Bull. 20; Rev. Rul. 62-16, 1962-1 Cum. Bull. 7. The amount of petitioner's total income and the portion thereof allocable to these two exempt tracts is to be determined by the district court on remand (Pet. App. 14).

Like all other citizens, Indians are subject to federal income taxation unless exempt by statute or treaty. *Superintendent* v. *Commissioner*, 295 U.S. 418, 421 (1935). It is undisputed that no treaty or statute expressly exempts from taxation the income petitioner derived from cattle operations on leased trust land not allotted to him. Nevertheless, petitioner contends that such an exemption arises by implication under the General Allotment Act of 1887[3] as construed by this Court in *Squire* v. *Capoeman*, 351 U.S. 1 (1956), and that, consequently, the decision below is in conflict with *Squire*.

In *Squire* v. *Capoeman, supra*, the Court observed that the General Allotment Act guaranteed that lands allotted to the Indians and held in trust by the United States would eventually be delivered to them free and clear of all charges and encumbrances whatsoever. The Court construed this statute as exempting from taxation profits directly derived from land allotted to an Indian, provided the land was held in trust for him by the United States. Here, the government conceded that the income earned by petitioner on the 646 acres of trust land allotted to him or beneficially owned by him pursuant to an earlier allotment is exempt from taxation under *Squire* v. *Capoeman, supra*. But there is nothing in the General Allotment Act which exempts the income earned by petitioner on the 4,160 acres of trust land he leased under a grazing permit.[4] The federal government has not guaranteed to deliver the title of such lands to him free

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[3]Ch. 119, 24 Stat. 388 (25 U.S.C. 331 *et seq.*).

[4]The courts have consistently declined to interpret *Squire* as exempting from taxation income not directly derived from allotted land. See, *e.g.*, *Jourdain* v. *Commissioner*, 617 F. 2d 507 (8th Cir. 1980), cert. denied, No. 79-1985 (Oct. 6, 1980), and *Commissioner* v. *Walker*, 326 F. 2d 261 (9th Cir. 1964) (tribal official's salary paid out of revenues derived from land); *Fry* v. *United States*, 557 F. 2d 646 (9th Cir. 1977),

and clear of all charges and encumbrances. As to such lands, petitioner is no different from any other lessee of the lands, Indian or non-Indian. This Court has long held that an Indian's income is not tax-exempt merely because he is a ward of the United States and his property is held in trust for him. *Superintendent* v. *Commissioner, supra*, 295 U.S. at 421. As the Eighth Circuit observed in *Holt* v. *Commissioner, supra*, 364 F. 2d at 41, "[t]he taxation of the taxpayer's individual profit derived from his lease of tribal land cannot possibly represent a burden or encumbrance upon the tribe's interest in such land."

Moreover, as the court of appeals pointed out (Pet. App. 5), there is no merit to petitioner's suggestion (Pet. 7-10) that Indians, unlike other citizens, enjoy an implied exemption from federal income taxation. This Court has long held that Indians are subject to the income tax unless a treaty or statute has "clearly expressed" an exemption for some type of income. *Squire* v. *Capoeman, supra*, 351 U.S. at 6; *Superintendent* v. *Commissioner, supra*, 295 U.S. at 419-420; *Heiner* v. *Colonial Trust Co.*, 275 U.S. 232, 234-235 (1927). Thus, this Court stated in *Choteau* v. *Burnet*, 283 U.S. 691, 696 (1931), that "[t]he intent to exclude must be definitely expressed, where, as here, the general language of the Act laying the tax is broad enough to include the subject matter." See also *Commissioner* v. *Walker*, 326 F. 2d 261, 263 (9th Cir. 1964): "Indians are subject to payment of federal income taxes * * * unless an exemption from taxation can be found in the language of a Treaty or Act of

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cert. denied, 434 U.S. 1011 (1978) (payments to Indian logger who worked on reservation land); *Holt* v. *Commissioner, supra* (profits received from ranching activities conducted on tribal land); *Critzer* v. *United States*, 597 F. 2d 708 (Ct. Cl.), cert. denied, 444 U.S. 920 (1979) (profits derived from operation of restaurant, motel and gift shop located on tribal land); *Beams* v. *United States*, 294 F. Supp. 1218 (E.D. Okla. 1968), aff'd per curiam, 417 F. 2d 197 (10th Cir. 1969) (income derived from the reinvestment of royalties).

Congress." Accord, *Holt* v. *Commissioner, supra*, 364 F. 2d at 40. In sum, there is no exemption in the absence of support in the language of a treaty or statute.

2. Nor are petitioner's profits from cattle operations on the leased land exempted from taxation by the provisions of the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984 (25 U.S.C. 461 *et seq.*). Section 16 of the Act, 25 U.S.C. 476, upon which petitioner relies (Pet. 15-18),[5] provides that if the members of a tribe choose to be governed by the Act, the tribe (or its tribal council) can "prevent the sale, disposition, lease or encumbrance of tribal lands." But a tax levied on income derived by an Indian from leasing activities conducted on lands not allotted to him cannot be considered as creating an "encumbrance" on tribal lands, and no court has so held. See *Holt* v. *Commissioner, supra*, 364 F. 2d at 41. At all events, petitioner cannot seek shelter under the Indian Reorganization Act because the Fort Peck Tribes, of which he is a member, specifically voted against the application of the Act (Pet. App. 11).

3. Finally, contrary to petitioner's claims (Pet. 18-20), he has not been denied equal protection of the laws. Congress acted well within its discretionary authority under the Constitution to make legislative classifications when it decided to exempt from tax income directly derived by an Indian from his own allotted land without also creating an exemption for income derived by an Indian from land allotted to

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[5]Petitioner also points to Sections 5 and 6 of the Act, 25 U.S.C. 465 and 466, in support of his claims (Pet. 10-15). But those sections merely provide for an exemption for certain lands from state and local property taxes (see *Mescalero Apache Tribe* v. *Jones*, 411 U.S. 145, 155-158 (1973)) and establish a general policy "in favor of efficient land use on Indian reservations" (Pet. App. 10). As the court of appeals noted (Pet. App. 8-10), neither of these provisions establishes a federal income tax exemption for the profits derived from activities conducted on leased trust land.

other Indians or from unallotted tribal land. See *United States* v. *Maryland Savings-Share Ins. Corp.*, 400 U.S. 4, 6 (1970). See also *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 584 (1937).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JANUARY 1981

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